orney General
tty D. Montgomery

OHIO LEGAL ASSISTANCE FOUNDATION

Are You Concerned Because Your Legal Affairs Are Not in Order?

If you are an eligible senior citizen, volunteers from the Ohio Attorney General's Office can provide you with:

— General Will —

— General Power of Attorney —

— Living Will —

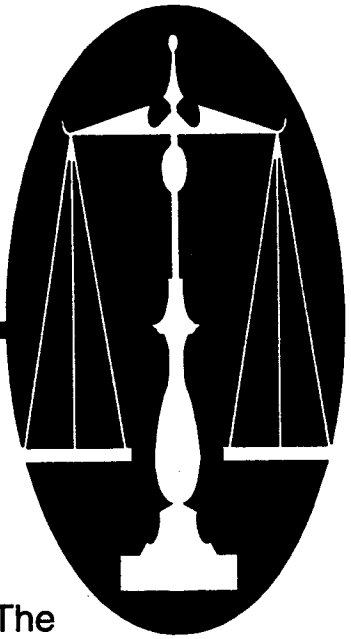
— Health Care Power of Attorney —

— Free Personal Consultation and Services By a Qualified Lawyer —

For more information, please contact The Ohio Legal Assistance Foundation toll-free at (800) 877-9772.

(See reverse side for eligibility guidelines.)

Ohio Legal Assistance Foundation Volunteer Lawyer Services



Are You Eligible for Volunteer Lawyer Services?

This eligibility sheet offers guidelines for applicants to the Volunteer Lawyer Services program. However, this information does not guarantee an individual's final eligibility. The Ohio Legal Assistance Foundation retains the exclusive right to make the final decision to accept applicants for service.

Number of People in Household	Monthly Income	Annual Income
1	$1,305	$15,657
2	1,758	21,094
3	2,211	26,532
4	2,664	31,969
5	3,117	37,407
6	3,570	42,844

"Income" Consists of:

- ✓ Gross wages earned from employment.
- ✓ Public assistance received by the household.
- ✓ Unemployment.
- ✓ Social security.
- ✓ Alimony.
- ✓ Child support.
- ✓ Regular gifts from family and friends intended for payment of household expenses.
- ✓ Any other form of benefit.

Limits on Assets:

- ✓ Liquid assets are limited to $2,000. (Examples: checking or savings accounts)

- ✓ Non-liquid assets are limited to $5,000. (The family home and car are exempt from this category.)

AG PROJECT TRAINING MANUAL

PROGRAM OVERVIEW

Wills -- From Start to Finish

Sponsored by the Ohio Attorney General's Office
for
Volunteer Assistant Attorneys General & Paralegals

Friday, October 12, 2001

Ohio Attorney General's Office
30 East Broad Street, Lobby Hearing Room
Columbus, Ohio 43215-3428

9:00 a.m. - 9:15 a.m.	**Welcome Remarks & Overview of Changes to the Program** *June Flynn, Pro Bono Program Coordinator*
9:15 a.m. - 10:45 a.m.	**Wills** *Lloyd E. Fisher, Jr., Esq.* *Porter, Wright, Morris & Arthur*
10:45 a.m. - 11:00 a.m.	**Break**
11:00 a.m. - 12:30 p.m.	**Practical Application of Knowledge** *Mark S. Anderson, Assistant Attorney General* *Jennifer L. Pratt, Assistant Attorney General* *Daniel M. Hall, Assistant Attorney General*
12:30 p.m. - 12:45 p.m.	**Question & Answer Session**

WILLS -- FROM START TO FINISH

OAG TRAINING SESSION

October 4, 2001 (Cleveland)
October 12, 2001 (Columbus)

INTAKE, CONFLICTS AND OAG POLICIES/PROCEDURES

I. Case Intake at the Attorney General's Office

A. Types of Cases:

General wills, advance directives (living wills, health care powers of attorney), general powers of attorney.

B. Receipt and Assignment.

C. Retainer Agreement.

D. Committee Oversight.

E. Sample pleadings.

F. Technical backup/support.

G. Case Closure.

II. Conflicts of Interest

Whether the outside practice client's interest might be adverse to any client of the office, even if such office client is not involved in the matter with the outside practice client.

A. Public.

B. Private.

III. OAG Policies/Procedures

A. Outside practice of law prohibition; pro bono exception.

B. Attorneys' time.

1. On your own time.

2. Can, when unavoidable, be done during normal business hours.

3. Limited to 40 hours per pro bono program year (May 1 - April 30).

C. Malpractice Insurance.

D. Expenses: direct and indirect.

E. Identification with the Office.

May not indicate or represent in any way that you are acting on behalf of the Office or in your official capacity.

F. Use of Office Resources.

1. May use phones (personal line), word processors and dictation equipment.

2. Limited use of office supplies, paper, copying and non-long distance faxes.

3. May **not** use office stationery, business cards, state vehicles (without prior approval of the First Assistant Attorney General), state credit cards.

4. Clerical support may be used, in limited fashion.

PROTOCOLS

Pro Bono Committee

Randal C. Berning	Cincinnati Office	(513) 852-3497
Brian C. Cook	Crime Victims	(614) 466-5113
June M. Flynn	Administration	(614) 466-4638
Jeffery P. Hastings	Cleveland Office	(216) 787-3030
Craig R. Mayton	Administration	(614) 466-4638
Yvonne T. Pollex	Toledo Office	(419) 245-2550
Mary Lynn Readey	Education	(614) 644-7250
Deborah K. Shanahan	Policy	(614) 644-1234
Kent M. Shimeall	Chief Counsel	(614) 466-2872
Peter M. Thomas	Labor Relations	(614) 644-8462
Pamela J. Vest	Transportation	(614) 466-7020

OHIO ATTORNEY GENERAL
PRO BONO PROGRAM

I. Policy

The Attorney General has agreed to participate in a pro bono program co-sponsored by the Columbus Bar Association and the Ohio Legal Assistance Foundation ("CBA/OLAF"). This program will match volunteer lawyers from the Ohio Attorney General's office with low-income senior citizens or individuals facing end-of-life issues who are in need of legal services in the area of preparation of wills, living wills, durable powers of attorney for health care, and general powers of attorney.

In light of the serious unmet need for legal services for persons of limited means as documented in Ohio State Bar Association studies; the aspirational standard to serve the disadvantaged; the public interest underlying the pro bono program; and the program's direct benefits in terms of broadened experience and increased professional skills for our attorneys, the Attorney General has determined that the provision of pro bono services, including a limited use of state resources as outlined below, is consistent with and furthers the state's interests.

II. Summary of Program

As noted, this program will match volunteers with low-income elders or people facing end-of-life issues who need legal services. The Attorney General's pro bono program is an exception to the prohibition on the private practice of law. This program is voluntary, and participants will engage in pro bono activity in addition to their official duties. Each attorney will take all necessary steps to distinguish his or her pro bono representation from the work of the office.

The office will support the program in several ways. First, cases will be referred to our pro bono Coordinating Committee (the "Committee") from the CBA/OLAF. This Committee, through its administrative support staff, will then refer the cases to volunteer attorneys.

The office will provide reasonable secretarial support, so long as such support is voluntary, and the time commitment of the support staff is limited and does not interfere with the performance of primary responsibilities to this office or to client agencies. The office will provide centralized coordination for the program through the Pro Bono Program Coordinator. The office will also make available its Ethics Counsel or the Pro Bono Committee to screen potential conflicts of interest. The office will allow the volunteer attorneys to participate in training programs in the areas of representation. Finally, the office will adjust its policy for the use of earned compensatory time to allow this form of leave to be earned by lawyers when they engage in pro bono representation.

III. Pro Bono Coordinating Committee

The Committee consists of attorneys from units throughout the office. The Committee will serve as the liaison between the CBA/OLAF and the volunteer attorneys. Volunteer attorneys may approach the Committee with questions concerning conflicts of interest. The Committee also is available to provide advice on issues that may arise as attorneys participate in the pro bono program.

IV. Process

The CBA/OLAF will refer a case or matter directly to the Committee after screening the prospective client for financial eligibility. Assuming that no conflict of interest is apparent, the program's administrative assistant will contact an attorney who has indicated a willingness to participate in the program.[1] The attorney should verify that he or she has no conflict of interest before proceeding with the case. The volunteer attorney should contact any Committee member if questions concerning conflicts of interest arise.[2] When a case has been completed, the volunteer attorney should notify the Pro Bon Program Coordinator by completing the appropriate "Final Disposition" form. If the attorney leaves the OAG after completion of the case, the case file should be forwarded to the Committee. Should the volunteer attorney leave the OAG during the pendency of the case, that attorney will be expected to continue representation of the pro bono client.

V. Cases

Attorneys involved in the pro bono program will provide representation and services in the following areas only:

> General wills, advance directives (living wills, health care powers of attorney), general powers of attorney.

Volunteers will receive free CLE training in these areas. Technical backup and support is available from legal aid societies and other resources identified with the project. In addition, reference materials in these areas are available in the library.

This program has adopted a Retainer Agreement that should be signed by each client. A copy of this agreement will be sent to each volunteer attorney when a case is accepted.

The Coordinating Committee will provide sample forms and other relevant materials to the volunteer attorneys.

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[1] The program operates on a May 1 to April 30 year. No attorney will be asked to handle more than one case or matter at a time, and attorneys are limited to forty (40) hours of pro bono work in this program during the pro bono program year.

[2] If an unanticipated conflict of interest later arises that makes further representation or work impossible, the Committee will refer the case or matter either to another volunteer attorney or back to the referring organization.

VI. Attorneys' Time

Program volunteers are encouraged to carry out their pro bono responsibilities on their own time. However, because this program is directly related to the Attorney General's mission of addressing the needs of underserved populations, is officially sponsored by the Attorney General, and enhances the professional development and skills of Attorney General employees in their current positions, volunteers may perform pro bono responsibilities during normal work hours, as limited by the policies stated herein.

Both for professional and statistical purposes, the volunteer attorney must record time and nature of work devoted to pro bono activity.

VII. Malpractice Insurance

All OAG attorneys participating in the OAG pro bono program will be covered by malpractice insurance carried by the Ohio Legal Assistance Foundation for activities undertaken in furtherance of the program.

VIII. Expenses

Expenses associated with the OAG pro bono program will be of two possible types, direct and indirect.

Direct expenses would include such items as filing fees incurred when a power of attorney is filed with the County Recorder. These fees will be paid by the client unless waived by the governmental agency. Indirect expenses would include items that inherently must be supplied by the OAG, but which will be for the benefit of pro bono representation. This would include such items as paper, postage, supplies, copying and necessary long-distance telephone usage.

Mileage and parking are not reimbursable expenses. On rare occasions and with prior approval of the First Assistant Attorney General, where distance or logistics necessitate, state vehicles may be utilized by groups of Attorney General employees providing pro bono services under an office-sponsored program.

IX. Closing a Case

Once an attorney has completed representation in a matter, the attorney should send a closing letter to the client and return the client file to the program administrator. At that time the program administrator will send a brief letter to the referring organization stating that the case has been completed and what was accomplished. A copy of this letter will be placed in each individual client file.

All case files will be kept by the Pro Bono Program Coordinator for permanent storage.

X. Identification with the Office

Staff members who participate in pro bono activities or in providing pro bono services may not indicate or represent in any way that they are acting on behalf of the office or in their official capacity. If a staff member has any reason to believe that those receiving service, opposing counsel, or the courts mistakenly believe that a staff member is acting in an official role, staff must make a clear disclaimer that they are not acting on behalf of the office or in their official capacity. For example, if a staff member is known to opposing counsel or the court as a member of the Attorney General's staff, a disclaimer must be made.

A. The staff member may not use office stationery or business cards, or otherwise identify himself or herself as a government attorney in any communication, correspondence or pleading connected with pro bono activities.

B. The general office telephone number may not be used for pro bono activities. Phone calls may be received either on the staff member's individual line, through the referring program or organization, or at the staff member's home.

C. Except where the safety and welfare of Attorney General employees may be at issue, the office may not be used for meetings with clients in a pro bono case. Meetings may be scheduled at the Columbus Bar Association's facilities through the Pro Bono Program Coordinator.

XI. Use of Office Resources

A. Hours of Work

As noted above, pro bono activities may be performed within office work hours; however, the activities must not interfere with the employee's regular workload or the quality of the employee's work product.

B. Telephone Calls

Local telephone calls should be made from the staff member's private line. Generally, long distance telephone calls may not be charged to the office.

C. Offices/Library

Staff members may use their individual offices to do research and to draft pleadings, briefs, Wills, Durable Powers of Attorney, Living Wills and Health Care Powers of Attorney. The library may also be used for doing research related to pro bono projects. Such work must be done in a manner, which does not interfere with the performance of the office's or staff member's regular functions or duties and responsibilities. Office computer research facilities (*e.g.*, Lexis) may not be used to do pro bono research.

D. Clerical Support

Support staff may assist volunteer attorneys within carefully observed limits, and may do so during regular work hours. Ordinary agency tasks have priority, but support staff may perform limited typing of short letters and documents. Although not expected as part of this program, more extensive typing that poses the risk of significant interference with agency activities should be performed only with the express approval of the attorney's section chief. Attorneys are encouraged to do their own word processing.

E. Supplies and Equipment

1. Staff members may use word processing and dictation equipment so long as such use does not interfere with the performance of the office's or the staff member's regular functions or duties and responsibilities.

2. A limited amount of office supplies, paper, photocopying, and non-long distance fax use is available to staff members performing pro bono work consistent with other provisions of this policy. Lengthy documents should be copied at referring agencies.

3. Volunteer attorneys are specifically prohibited from using the following OAG resources in their pro bono representation: office stationery, business cards, state credit cards, and state accounts for payment of costs or expenses.

Amended 8-24-01

Attorney General Pro Bono Project

Scope of the Program: Volunteer lawyers from the Ohio Attorney General's office will visit nursing homes and residences of low-income senior citizens and others facing end-of-life decisions to provide assistance in drafting simple wills, general powers of attorney, living wills and health care powers of attorney.

A. **General Administrative Details:** Ohio Legal Assistance Foundation will assume administrative responsibility for the program starting September 1, 2001. Ohio Legal Assistance Foundation's malpractice coverage will apply to volunteers. Ohio Legal Assistance Foundation will perform intake for the project. Ohio Legal Assistance Foundation will also work in partnership with the Attorney General Coordinator and Pro Bono Committee that meets regularly in the Attorney General's office to discuss outreach, case assignments and other issues relevant to the project. The Columbus Bar Association, Columbus Legal Aid and Pro Seniors will provide additional supporting roles in the project.

B. **Intake:**

1. Ohio Legal Assistance Foundation will handle intake on the project. Calls will come in to the main switchboard at 1-614-752-8919 or 1-800-877-9772. Additionally, intake calls will be made to individuals who sign up at senior fairs and other events.

2. Shirley Baldeh will handle the intake calls and will use an Access intake sheet that has been developed by Karen McCall. Modifications can be made to the intake sheet when additional needs are discovered.

3. Intake calls will clarify who the client is, where he/she is located, contact information, and other necessary information including nature of the request and special circumstances. Clients will be screened for income eligibility. (Eligibility requirements are listed on the project brochure.) For those who are above income and ineligible, the callers can be referred to the Columbus Bar Association Lawyer Referral Service at 1-614-221-4112.

4. When intake is completed and the client has been deemed eligible for the project, a copy of the intake sheet will be forwarded via facsimile to June Flynn in the Attorney General's office at 1-614-466-5087. The Attorney General Coordinator will assign the case to a qualified volunteer who will make contact with the client within three business days.

C. **Case Close-Out:**

1. The Attorney General Coordinator will forward to Ohio Legal Assistance Foundation a final disposition sheet summarizing the services provided by the volunteer, hours devoted to the case and other pertinent information.

D. Project Data:

1. Ohio Legal Assistance Foundation will periodically make reports to the Attorney General's office concerning project statistics based on the intake and close-out data.

E. Client Outreach:

1. The Pro Bono Committee in the Attorney General's office has been actively working on outreach. Speakers are sent to senior centers to discuss the project as one part of the client outreach efforts. The Attorney General's office has developed a brochure describing the project, which has been distributed in various areas. The Attorney General's office has also developed a public service announcement that will run on some Columbus radio stations.

2. Ohio Legal Assistance Foundation will assist in identifying additional outreach opportunities to spread word of the project and the availability of volunteer services. Ohio Legal Assistance Foundation, in conjunction with the outreach efforts conducted by the Attorney General's office, will undertake identifying and developing mailing lists and other efforts. Ohio Legal Assistance Foundation will also assume responsibility for outreach to nursing homes.

3. Various outreach efforts will be catalogued and their effectiveness will be gauged as the project advances.

F. Continuing Legal Education Training:

1. Ohio Legal Assistance Foundation will assist the Attorney General's office in training volunteers in the regional offices and in the main office by using the video that was made of the first training.

2. Ohio Legal Assistance Foundation will work with the Columbus Bar Association, Columbus Legal Aid and Pro Seniors in determining what additional training materials or updates will be necessary for volunteers.

G. Volunteer Support:

1. Volunteers who need backup technical assistance will be linked with experts provided by the Columbus Bar Association, Columbus Legal Aid or Pro Seniors. All of these organizations have agreed to provide that service.

H. Attorney General Regional Offices:

1. Ohio Legal Assistance Foundation will develop an action plan for implementing the project in each of the cities housing Attorney General regional offices.

CLIENT FILE FORMS

Client Intake Form

If you wish to print this record press printer button

First Name

Last Name

Address

City

State

Zip Code

Phone Number

Intake Date

Referred By

Income $0.00

Assets $0.00

Household Size 0

Age 0

Referred to

Referral Date

Comments

Volunteer Name

Hours 0

Living Will

Power of Attorney:

Will:

Health Care Power of

Closing Comment

Closing Date

RETAINER AGREEMENT
For
Ohio Attorney General/Ohio Legal Assistance Foundation
Pro Bono Program

1. I authorize _____ to assist me in the following manner:
(Attorney Name)

_____

_____

2. You will not charge me for your services. I will pay for direct costs, such as filing fees, if applicable.

3. You will keep me informed about the status of my documents.

4. I can tell you to stop representing me whenever I want.

5. You can stop representing me if I do not cooperate with you, if I no longer financially qualify for legal assistance, or for any other reason allowed by the rules governing lawyers.

6. I can complain if I do not like the work being done on my documents, or if you tell me you are going to stop representing me.

7. Everything I have told you about me and my legal needs is true as far as I know.

8. I have been given a copy of this form to keep.

I HAVE READ THIS AGREEMENT, OR HAVE HAD IT READ TO ME, AND UNDERSTAND AND AGREE TO ITS TERMS.

_____ _____
Attorney for Pro Bono Program Client

_____ _____
Date Date

Ohio Legal Assistance Foundation -- Attorney General Pro Bono Program

e-mail: clyde@olaf.org
(614) 752-8919
(614) 728-3749 (fax)

FINAL DISPOSITION

Date:_____

OAG Attorney Name:_____

Attorney Phone:_____ Fax:_____ E-mail:_____

Paralegal/Law Clerk:_____

OAG Client Name:_____ Client Phone:_____

Date of Referral:_____

In space below, please describe the outcome of the case:

_____

_____

_____

_____

_____

Number of pro bono hours devoted to this case: _____ Attorney Hours

_____ Paralegal/Law Hours

_____ _____

Attorney Signature Date

CLIENT RETENTION FORMS

Client Retention Time Record

Speaking Request By: _____
Name

_____
Address

_____
City State Zip

_____
Phone

Contact: _____

AAG Name: _____

Date of Speech: _____

Travel Time: _____

Speaking Time: _____

Notes:

Attorney General
Betty D. Montgomery

OHIO LEGAL ASSISTANCE FOUNDATION

Are You Concerned Because Your Legal Affairs Are Not in Order?

If you are an eligible senior citizen, volunteers from the Ohio Attorney General's Office can provide you with:

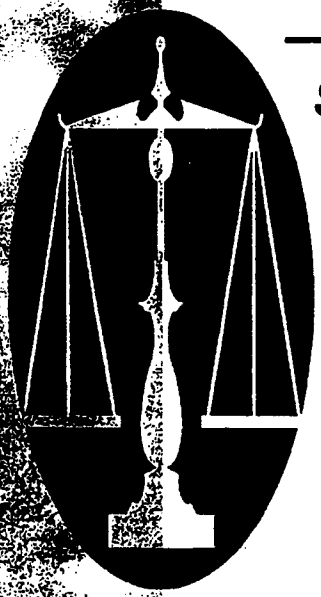
— General Will —

— General Power of Attorney —

— Living Will —

— Health Care Power of Attorney —

— Free Personal Consultation and Services By a Qualified Lawyer —



For more information, please contact The Ohio Legal Assistance Foundation at (614) 752-8919 (in Columbus) or toll-free at (800) 877-9772.

(See reverse side for eligibility guidelines.)

I am interested in speaking to an attorney with the Attorney General's Pro Bono Program about the following legal documents.

_____ Living Will

_____ Durable Power of Attorney for Health Care

_____ Will (requires pre-approval by the Ohio Legal Assistance Foundation at 1-800-877-9772. Screening can be completed over the telephone.)

_____ General Power of Attorney (requires pre-approval by the Ohio Legal Assistance Foundation at 1-800-877-9772. Screening can be completed over the telephone.)

_____ _____

Name Telephone Number

Please return this form to your center director.

REPRESENTATION OF SENIORS

General tips for interacting with seniors

General Tips:

Respect a senior's age by addressing a client as Mr. or Mrs. Do not use their first names unless requested to do so. This courtesy is particularly important to older minority clients. As a general rule, older women dislike the term "Ms."

Be willing to spend a few minutes "chit-chatting" to establish rapport. Inquiring about grandchildren or pre-retirement jobs is a good ice-breaker.

Recognize that an attorney is a strong authority figure for older people. Most of them have had little or no contact with attorneys during their lifetimes. Avoid paternalistic or overly technical language; be friendly and approachable.

Be mindful of client confidentiality. Don't assume that a senior's case may be discussed with a relative or social worker. Children often accompany their parents to an appointment with a lawyer. Ask the senior if he would like to excuse the child before you begin the consultation. Resist the temptation to rely on a child's indication that "Mom wants..." Ask Mom herself what she wants.

Recognize communication barriers: If your client wears a hearing aid or seems to have a hearing problem, try to eliminate background noise, eg. radio, television. Seek a quiet corner if you are in a group setting or senior center. Look directly at the client when speaking. Resist the temptation to turn to another person to "interpret" for a hard-of-hearing client.

Listen closely to the client's conversation to determine his concerns or worries. Respect these worries and concerns, even though they may seem trivial. For example, if preparing a will, determine what the client's underlying fears are: fights in the family, disinheriting an heir, fear of burdening the family. Draft appropriate language to address these concerns and point them out to the client.

Recognize that family dynamics play a big role in senior legal situations. Sibling rivalry often re-emerges in many families as children try to decide "what's best for Mom." (That birth order thing is real; the oldest child always wants to be in charge, even if he/she lives miles away. The oldest child is likely to be miffed if a younger sibling is named as power-of-attorney or executor.)

Do not be judgmental regarding a client's home, grooming, housekeeping. Recognize that seniors value independence above all and they will take outrageous risks to stay in their own homes. Do not violate their trust by

threatening to "turn them over" to Adult Protective Services for "their own good." (A referral to APS is appropriate if the senior is in immediate, serious danger.)

Written documents:

Use a large font for correspondence, 14 pt. is recommended by the Toledo Sight Center and AARP. The Ohio Dept. of Aging recommends Arial or Helvetica font. Black ink on white paper is best. Black ink on red, orange, or yellow is particularly difficult for older eyes. Avoid high gloss paper.

Don't assume seniors are literate; many seniors will not admit to you that they can not read. It was not unusual for children as young as 10 to leave school during the Depression. This is particularly true of seniors whose first language is not English. Watch for eye movement when you ask them to review a document. If their eyes do not move across the page, it is likely that the senior can't read. If you suspect that the client can't read, offer to summarize the document.

If preparing advance medical directives—emphasize to the client that signing these documents is not a substitute for good communication about medical issues with family members. These documents do not reflect a senior's values, beliefs, etc. and provide little personal guidance to family members.

Psychology of Aging materials

BASIC HUMAN NEEDS and the PSYCHOLOGY OF AGING

Every person has certain basic needs which must be met so that he can survive as a human being. A need is a requirement for survival. Sometimes an individual can satisfy his needs himself and sometimes he needs help.

When a patient becomes our client it means he is unable to satisfy all his needs himself. (For instance, a person may need help with his meals or he will not be able to meet his need for nourishment.) As a volunteer, you will help your client meet some of his basic needs until he no longer needs your help.

It is important and often difficult to be sure if your actions are meeting the clients' needs. Your knowledge of these needs and your objective observations, will help your supervisor determine if all the needs in a particular home are being met by the plan of care.

All human beings have basic physical needs that must be met in order to live. These needs do not all have to be met one hundred percent every day, but the more every person's needs are fulfilled, the better the quality of life.

Psychological needs must be satisfied to have a healthy emotional and social outlook. As with physical needs, these too, do not have to be met one hundred percent every day. But the more completely every need is met the better the emotional state of the individual.

Physical and psychological needs overlap and affect each other. Each person determines what is his particular balance. When one need is out of balance due to illness, the other needs are also affected. For example, when a person is ill and requires more rest, his food intake must be changed to meet this change in activity. His clothing will change, his weight may change and his mood may alter.

Many things can change a client's behavior and attitude during an illness. The client may be frightened, angry or sad. Some factors or influences may be the diagnosis, seriousness of the illness, age, previous illness, experience and mental condition. Other things that make a difference are the client's personality and financial situation.

Every client has different reactions to pain, treatment, annoyances and even kindness.

ALWAYS TREAT A PERSON AS AN INDIVIDUAL. PRACTICE CONSIDERATION ON AN INDIVIDUAL BASIS.

CONFUSION IN THE ELDERLY

Particularly when working with the "old old," and more likely so within nursing homes, the student volunteer may encounter persons who are showing signs of confusion. The accepted term for various kinds of *chronic* confusion or other brain dysfunction related to aging is ***senile dementia***. Dementia is one of the least well-understood conditions which affect the elderly. This is a brief summary of what we do know.

Confusion in the elderly may be exhibited by "distributed orientation to time, place, or person, sometimes accompanied by disordered consciousness." In simple language, this means that the person may lose track of time, where he or she is, whom he or she is speaking with. He or she also may not be able to think rationally, and may even hallucinate sounds or sights. These kinds of confusion may have one or more causes. "Alzheimer's disease" is the most commonly known, largely because it tends to show itself at an earlier age.

It is important to note that confusion can be short-lived and temporary *or* chronic and incurable.

Temporary confusion may result from:

* Physical illness
* Imbalance in essential minerals
* Inadequate fluid intake
* Malnutrition
* Drug reaction, *or*
* Substance abuse.

Treatment of such problems will usually result in the person fully regaining his or her orientation, mental and social abilities.

Chronic confusion is usually caused by progressive debilitative changes in the brain. (Alzheimer's disease is an example.) Once the damage has occurred, there is usually no potential for full return of the person's faculties. These kinds of dementia are due to factors such as:

* Brain chemistry changes
* Personality
* Environmental stress
* Hereditary factors

Chronic dementia may result in one or more of the following:

* Memory loss (usually short-term memory, such as the events of the day, week, etc. Long term memory, such as childhood or earlier adult events, usually remains until late in the course of the disease.)
* Learning disability
* Confusion about time and location
* Increasing difficulty speaking or understanding
* Sudden, unpredictable emotional reactions, and
* Depression.

Persons suffering from dementia have special care needs, which, if done properly, can help them to remain happier, calmer, and less disoriented than if they are neglected. Young volunteers will not normally work with persons who have more than mild dementia. To work with moderately or severely demented elderly requires skills and sensitivities that young people are not expected to have.

Prepared by London & Neal Home Health Care Services

ETHICAL DILEMMAS RE: COMPETENCY OF NURSING FACILITY RESIDENTS

Thomas G. Bedall
Managing Attorney
Pro Seniors, Inc.
105 East 4th Street
Suite 1715
Cincinnati, Ohio 45202-4008
(513) 345-4160

May 24, 2000

Representing Older Clients

Gregory S. French, Attorney at Law
1244 Paddock Hills Ave.
Cincinnati, OH 45229-1218
(513) 641-4692
Fax: (513) 242-5542

Who is your client?

If a third party contacts you on behalf of a client, you need to inform each person of your obligation to hold inviolate the client's confidences and secrets. DR4 - 101 and EC4 -1. You also need to explain your duty to preserve the confidentiality of attorney/ client communications and to provide the client your undivided loyalty. EC5 -14; Haynes v. First National State Bank of New Jersey, 87 N.J. 163 (1981).

If a third party offers to pay your fee, you cannot accept this compensation without the knowledge and consent of the client after full disclosure. DR5 - 107A(1) and EC2 - 21; ABA Formal Opinion 320 (1968). You also must determine whether acceptance of this third party payment will influence your independent professional judgement. DR5 - 107 (B).

If you are asked to represent an older person and another party, you may do so only if you can adequately represent the interests of each and each consents after full disclosure. EC5 -16; Glasser v. United States, 62 S. Ct. 457, 467 (1942). The Code prefers that persons in need of legal assistance have their own counsel. EC5 - 16. Before you agree to represent each client, you must explain any circumstances that might cause either client to question your undivided loyalty. EC5 - 19.

If an irreconcilable conflict arises between your clients or between either client and you, you must withdraw from representing both clients. If the conflict requires you to withdraw from litigation, you must also seek court permission to withdraw. Model Code DR2 - 110 and EC2 -32. If you are representing only one of the parties, you can give the unrepresented person no advice other than to obtain legal counsel. EC7 - 18.

Who determines whether your client is competent?

Client competency directly determines who makes decisions in the attorney/client relationship. The Code is based upon the premise that clients are competent adults capable of rational decision making regarding representation. If a client's decision making capacity is impaired, you should maintain a normal relationship with the client to the extent possible. ABA Model Rule 1.4 Comment. You should also seek to normalize such attorney/client relationships by developing strategies and skills to understand and communicate with such clients.

Depending on its severity, diminished capacity disturbs, prevents, or terminates the attorney/client relationship. Such impairment places on you the additional responsibility of determining the degree of your client's incapacity. EC7 - 12. The Model Rules recognize degrees of impairment, but offer little guidance on how to determine the degree of your client's incapacity. ABA Model Rule 1.5 Comment.

You may consider using a medical model to determine your client's competency. Such a model enlists the services of a "diagnostician" to determine the degree of your client's impairment. Id. However, such a model may breach client confidentiality , create a conflict of interest, and leave open the question of who pays for the expert's services — the client or you. Furthermore, using the expert's findings to act contrary to your client's wishes may violate the prohibition against using information gained through the attorney/client relationship to the client's disadvantage. EC4 - 5.

What criteria and standards govern client competency?

The intelligence, experience, mental condition, and age of your client all affect your responsibilities to your client. EC7 - 11. You may evaluate your client's competency by either a legal or a medical standard.

The law recognizes numerous legal standards of competency. One legal standard is the capacity to enter into a contract. A different legal standard is the capacity to execute a will. A third legal standard is that lack of capacity which subjects one to commitment or guardianship laws.

There is also a medical standard of competency based on the patient's ability to make and express a decision. This medical standard looks at the rationality of the factors on which the decision is based and the rationality of the patient's decision itself. It also looks at the patient's understanding of the decision's consequences.

What determines your responsibilities to your client?

The basic tenet of professional responsibility is your client's ready access to the independent professional services of a lawyer of integrity and competence. EC1 -1. Any impairment that renders your client incapable of making a considered judgement places additional responsibilities on you. EC7 - 12.

Several factors determine the scope of such additional responsibilities. EC 7 - 11. First, is the degree of the mental or physical impairment of your client. Second, is the type of legal assistance that you are to provide. Third, is whether you are contacted in a private or a public capacity.

What is necessary for you to competently represent an older client?

You may not handle a matter that you know or should know that you are not competent to handle. EC6 - 1 and DR6 - 101 (A) (1). To do this, you should keep abreast of relevant literature and developments, participate in CLE programs, and concentrate on particular areas. EC6 - 2.

To competently represent an older client, you need to know and understand the desires of your client. To do this, you need to develop a relationship with your client, who may be distrustful, afraid, frail, heavily medicated, or confused. Your skill and sensitivity in communications with older clients is critical to developing this relationship.

An awareness of the cognitive and intellectual differences that may occur with normal aging is necessary to competently represent your older client. This requires a knowledge of the aging process and an understanding of disturbances such as Alzheimer's disease and degenerative dementia. It also requires a knowledge of the community and aging network resources available to meet the needs of elderly clients.

What is your responsibility to keep your client informed?

You must ensure that your client makes decisions after being informed of relevant considerations. EC7 - 8. If your client is capable of contributing to the advancement of his/her own interests, you should obtain all possible aid from your client. EC7 - 12. Failure to inform and involve your client in decision making violates the Code. EC7 - 8.

Follow a step-by-step process to involve your clients in decision making. First, explore the issue to be decided and your client's ability to make an informed decision. Second, clarify the issue for your client, allow your client to consider the issue, and encourage your client to give feedback. Obtaining client feedback at each step in the decision-making process allows you to determine whether your client understands the information you have provided and whether your client is capable of assessing his/her various options.

Who makes decisions during the course of representation?

Your client has exclusive authority to make outcome determinative decisions. Nebraska State Bar Association v. Walsh, 294 N.W. 2d 873 (1980). Such decisions include whether to sue or not, what claims to make or waive, and whether or not to settle.

The duly-appointed guardian or legal representative of an incapacitated client can also make outcome determinative decisions. EC7 - 12; ABA Model Rule 1.2 (a).
If your client is incapacitated and has no legal representative, you may be compelled in court proceedings to make decisions for your client. EC7 - 12; ABA Model Rule 1.14. Comment. You should seek your client's help to the maximum extent possible and ensure that any acts taken safeguard and advance your client's interests. Id. You may not make any decision that, under the Code or other law, belongs exclusively to your client. Id.

You may make decisions not affecting the merits of the case or substantially prejudicing the rights of your client. Such decisions include procedural matters such as where to file, the extent of discovery, and how to conduct the trial.

What responsibilities do you have as a client advocate?

Your basic duty as a client advocate is to represent your client zealously within the bounds of the law. DR7 - 101 (A) (1). This means that you should seek what is best for your client to the extent allowed by the law. You may make every reasonable argument in support of any legal point, even if you are not convinced of its inherent soundness. ABA Formal Opinion 314 (1965).

There are two principal limitations on your role as client advocate. First, the decision of your client should control any action to be taken. Second, you are never justified in asserting any claim that is frivolous. EC7 - 4.

How does your client's incompetency affect you serving as his/her advocate?

If your client is disabled and does not have a legal representative, your ability to advocate your client's wishes will depend on your success in obtaining an informed decision from your client. Your client's impairment and the type of representation you are providing will determine your responsibility to advocate your client's wishes. EC7 - 1. For example, your client may have the capacity to execute a will and yet be mentally incapable of entering into a complex contract.

You may consider seeking court appointment of someone else to make your client's decisions. ABA Model Rule 1.14 (b). Guardianship is required only if the action under consideration can be performed only by your client or duly constituted representative. ABA Model Rule 1.14 Comment. Seeking a court-appointed surrogate undermines client confidentiality and may pose a direct conflict of interest with your client. It also may threaten your client's liberty interests and may expose him/her to trauma and expense.

Ultimately, you need to balance your client's need for decision making assistance with your client's other interests. These other interests include your client's autonomy, safety, independence, financial well-being, health care, and personal liberty. The Code is silent as to how to do this balancing.

What responsibilities arise from acting in your client's best interests?

You need to act with care to safeguard and advance the interests of your client. EC7 - 12. The less evidence of your client's wishes there is, the more you must advocate for your client's best interests. Your responsibility to determine your client's best interests increase with the extent to which your client cannot determine his/her own best interests.

Two principal factors determine what is in your client's best interests. First, are your client's rights, remedies, and economic interests. Second, is the extent to which you know what your client would decide if your client were capable of deciding.

How does your role as advocate for your client conflict with your role to act in your client's best interests?

The potential for your "advocacy" and "best interests" responsibilities to conflict is proportionate to the extent that you question your client's competency or capacity. Increased impairment increases your need to choose between advocating your client's decisions and advocating your client's "best interests."

Several factors are relevant to resolving this conflict between your "advocacy" and "best interests" roles. First, is the type of representation sought by your client. Second, is the forum in which your services are to be provided. Third, is the involvement of other parties in the matter you are handling.

What "nonrepresentational" responsibilities do you have to your older clients?

Older clients frequently have needs besides their need for legal assistance. Their legal problems are frequently the symptoms of underlying housing, health, nutrition, emotional, and social problems. Hence, you need to assess your client's legal and non-legal needs and link your client with appropriate aging network and community resources. Such aging network and community resources can prevent or minimize your client's legal problems and help you to meet your client's total needs.

Under the Adult Protective Services Act, you must report certain older persons, including clients, to the county department of human services. The persons you must report are non-institutionalized persons age sixty or older who are at significant risk due to self-neglect, abuse, or exploitation. O.R.C. §§5106.60 (A), (B), (G), and (K).

Cincinnati Referrals

Cincinnati Bar Association
Lawyer Referral
35 E. 7th St.
Cincinnati, Ohio 45202
(513) 381-8213

Legal Aid Society
215 E. 9th Street, #200
Cincinnati, Ohio 45202
(513) 241-9400

Cleveland Referrals

Cleveland Bar Association
113 St. Clair Avenue NE, #100
Cleveland, OH 44114-1214
(216) 696-3525

Cuyahoga Bar Association
The Leader Building, Ste. 1240
526 Superior Avenue, East
Cleveland, OH 44114
(216) 621-2414

Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, OH 44113
(216) 687-1900

Legal Aid Society of Akron
265 S. Main Street, #3
Akron, OH 44308-1223
(330) 535-4191

Columbus Referrals

Columbus Bar Association
Lawyers for Justice
175 South Third Street
Columbus, Ohio 43215
(614) 221-0754

Legal Aid Society of Columbus
40 West Gay Street
Columbus, Ohio 43215
(614) 224-8374

Ohio Legal Assistance Foundation
42 East Gay Street
Columbus, Ohio 43215-3119
(614) 752-8919

Toledo Referrals

Toledo Bar Association
Lawyer Referral & Information Service
Joyce Marciniak, Administrator
311 N. Superior
Toledo, OH 43604
(419) 242-2000

The Dos and Don'ts of Pro Bono Client Relations

There is a common misconception among attorneys in general that pro bono representation of low-income clients in probate matters is significantly less complex than representation of wealthier clients. To be sure, the complicated estate planning issues that accompany representation of a client who has enough financial resources to have to worry about the threshold for federal estate taxation are eliminated when dealing with clients of limited financial means. However, it is a mistake to underestimate the extent to which those issues are replaced by an entirely different set of equally perplexing issues in the context of a pro bono program such as that in which the Ohio Attorney General's Office is participating. From the problems presented by situations in which competency to make a Will is questionable, to the difficulties inherent in responding to requests for the inclusion of exceedingly complex Will provisions, these cases can be extremely challenging.

There is rarely such a thing as a "simple" Will, no matter what the testator's financial condition. Even if the Will itself ultimately contains relatively simple provisions, the client may present a whole host of challenges from questionable competency to the physical inability to hold a pen and make even a simple "X". Surprisingly, studies have shown that small estates generate as many, if not more, will contests and similar controversies than do larger estates.[1] The one common thread that runs through every case, however, is that each one puts the attorney's client relations skills to the test. Each one must be handled with professionalism, care and sensitivity. The following list of client relations dos and don'ts was designed to address many of the problematic aspects of preparing Wills for clients in the pro bono context.

1. **The Retainer Agreement: DO** establish a clear understanding between you and your client at the beginning of your representation by going over the terms of the Retainer Agreement together. Some of the clients with whom we deal in this program are relatively unsophisticated and/or inexperienced with legal matters. Many have never been represented by an attorney before. As such, a document which boldly states "Retainer Agreement" at the top may be somewhat daunting, and may connote financial obligation at first glance. Thus, it is important that the Retainer Agreement be treated as more than a formality – that it be explained carefully to the client before anyone puts pen to paper.

2. **Identifying Yourself and the Program: DON'T** leave the impression that the client is being represented by the Attorney General's Office. The Policies and Procedures Manual of the Attorney General's Office contains some very specific guidelines on this subject. The use of AG letterhead and AG business cards is clearly prohibited.[2] But what about oral representations of who you are and why you are there?

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[1] *Avoiding a Will Contest – The Impossible Dream?* 34 Creighton L. Rev. 7, 9 (2000).

[2] Your closing letter and any other necessary correspondence should *not* be printed on AG letterhead. Use plain paper with your name and address at the top – either your home address or the street address and floor of your office. *E.g.*, "Jane Doe, Esq., 30 E. Broad St., 25th floor, Columbus, OH 43215". The address should *not* contain reference to your Section or to the Attorney General's Office as a whole.

Certainly the safest course of action is to simply represent yourself to your client as an attorney who has volunteered to participate in a program designed to assist Ohio's seniors and others on fixed incomes with Wills, powers of attorney and living wills for no charge. However, a *careful* mention of the Attorney General's office may be made by noting that the office is jointly sponsoring the program along with OLAF, and that the Attorney General encourages her employees to volunteer their free time to participate in it.

3. **Staying on Point: DO** strike an appropriate balance between keeping the client interview on point and exercising a reasonable level of sensitivity and compassion. Easier said than done, right? Unfortunately, a recurring theme in pro bono representation of the elderly of limited means is that of the lonely individual who is delighted at the prospect of having the undivided attention of an attorney who has come to assist him or her with a Will or other related documents. The natural inclination of such an individual is to talk – about matters which are relevant and many which are not so relevant. This is problematic for several reasons. First, whereas you might expect to be able to cover the necessary subject matter in a client interview in one hour, an interview which meanders in and out of relevant subject areas might easily stretch into two hours or even more in length. Further, an interview that involves a great deal of discussion about subjects unrelated to the task at hand frequently fails to yield all the information needed to draft the requested documents because the attorney quite simply is too distracted to remember to ask all the necessary questions.

Maintaining focus and controlling the flow of client interviews is not an easy task by any means. This is especially delicate when the extraneous subjects arise due to the client's loneliness and need or desire to talk to someone. There are several techniques that may be employed in the face of such a situation. First and foremost, when a client strays off point onto a perceived tangent, try to find an appropriate pause in the conversation at which to bring the discussion full circle by relating it somehow to the topic at hand. For example, the conversation might go something like this:

AAG: Have you given any thought as to the person you might like to choose as the executor of your Will?

Client: Well, I suppose it should be one of my kids.

AAG: That's a very common choice, but it certainly doesn't have to be a child. The important thing is that you name a person that you trust to carry out your wishes responsibly.

Client: Well, the one thing I know is that I don't want my son Darrell to do it. That boy is about as irresponsible as they come. Last month, for example – he just got a new job after being laid off for more than a year. He gets his first paycheck and what does he do with it? Does he pay some of his debts? No. He puts a downpayment on a motorcycle! Not only is that a waste of money, but if you ask me, those things are dangerous, too!

AAG: I'm glad you told me that story, because it's a perfect example of what I was just talking about. Although I'm sure you love your son, Darrell, he does not at all sound like a person with the kind of maturity and responsible attitude that you would

want to choose as your executor. Now, I see that you have two daughters. Is either of them a better candidate to be executrix?

Another method of re-channeling an off-course client interview is the more direct approach. Again, at an appropriate pause in the client's story, interrupt politely. Say something like: "My goodness, we seem to have gotten off-track. We'd better stay on the subject or I'm sure to forget something important." Finally, see number 4 below for an important technique utilizing the initial interview questionnaire, which can be a lifesaver in one of these disjointed, rambling interviews.

Whatever technique you choose to combat this uncomfortable situation should always be used with tact, professionalism and compassion. Striking an appropriate balance between time and resource efficiency and compassion and sensitivity to the client's situation does the greatest service possible to both the client and the program.

4. **The Interview Questionnaire: DO** use the questionnaire provided with your Pro Bono Program materials, or one like it. This form can act as a checklist of salient points to be covered in the client interview. It becomes especially valuable in those situations where the client strays off point frequently. The attorney who has been distracted by a significant amount of extraneous information can easily forget to ask for the client's choice of executor, for example. Quick reference to the questionnaire can refresh the attorney's memory of where he or she left off just before the diversion. Further, the questionnaire can provide a convenient vehicle for redirecting the discussion as follows: "Excuse me, I'm sorry to interrupt, but I see that I have forgotten to find out whether all your children are adults. I'm afraid that if I don't ask now, I'll forget." If you're lucky, the interview will be back on point after that.

5. **Explaining the Purpose of a Will: DO** take the time to explain to your client the purpose and effect of a Last Will and Testament, especially when other documents, such as a living will are also being drafted. Make sure to point out that a living will is only effective during life; a Last Will and Testament is only effective upon death. With respect to explaining the structure and effect of the Will, the following are excerpts from a "script" prepared by Mark Anderson (BGR) for this purpose:

Will Explanation

There are three general issues that are dealt with in a last Will and Testament. First, after the payment of all debts including medical and funeral expenses, is the distribution of assets to beneficiaries. For instance, you can leave a particular item, such as a car or money to a specific beneficiary, whether it be an individual or an organization such as a charity. These are referred to as specific bequests. Commonly, whatever is left after the specific bequests or devises can be left to one beneficiary or to a group of beneficiaries. ...

The next issue is the designation of the testator's personal representative after death. This is the person who is responsible for gathering the assets and ensuring

distribution to the beneficiaries in accordance with the Will. The person is referred to as an executor or executrix. Commonly, the personal representative is related to the testator, such as being the surviving spouse, a child or other relative. The personal representative can be required to post a bond to ensure proper handling of the estate. Since this is an expense to the estate, it is commonly waived when the proposed personal representative is a beneficiary or other relative.

The third issue generally covered in a Will is the naming of a guardian for minor children. Although one guardian is generally named, a separate guardian can be named for the person of the minor child or children and a separate guardian named for the estate of the minor child or children. Careful consideration must be given to an appropriate naming of a guardian. For instance, I usually recommend against naming the testator's parents or parents-in-law as guardian of minor children, especially in cases with very young minor children as they may not be in a position to adequately care for the children based upon their own situation (e.g., their age and/or health) at the time of the testator's death. Of course, if either parent of the child/children survives the testator, that parent would be the guardian of any such minor child or children. Such circumstances might be a good example of when the testator might want to name a guardian for the estate of the minor child or children.

There are other things that can be set forth in a Will. For instance, many individuals want to indicate where they will be buried or that they be cremated. Such requests are "precatory," as they are not binding on the personal representative or the probate court. Furthermore, such provisions often are not effective in that a decedent's Will normally is not reviewed until after burial or cremation. Thus, I generally recommend that the individual make their desires in this regard clear to their personal representative and/or family members by means other than their Will.

6. **Consider and Plan for Contingencies: DO** encourage the client to plan for various contingencies in the preparation of the Will. While an elderly mother of adult children may not be able to conceive of the possibility that one of her children might actually predecease her, the fact remains that a good Will is one that is flexible and forward-looking enough to be effective even when the unexpected happens. Thus, encourage the naming of alternate executors. If the client is unwilling to consider that the named individual might predecease him, then suggest that the named executor might move to a distant state or even another country, making service as executor difficult or impossible. Further, when bequests are made to several individuals (*e.g.*, the testator's children), be sure to specify what happens if one or more of the beneficiaries predecease the testator. Does the testator want the deceased beneficiary's children to participate in the distribution equally with the testator's remaining children, or does he want the predeceased child's share to be distributed equally among that deceased beneficiary's heirs? The former concept is known as *per capita* distribution; the latter is *per stirpes* distribution. (For example, assume the testator has 3 children – A,B and C. C dies before the testator, leaving 2 children. The testator's Will calls for an equal distribution of his estate among his children. A *per capita* distribution would then split the testator's estate into four equal parts: ¼ to A, ¼ to B, ¼ to C's first child and ¼ to C's second

child. On the other hand, a *per stirpes* distribution would divide the estate as follows: 1/3 to A, 1/3 to B, 1/6 to C's first child and 1/6 to C's second child.)

7. **Competency Questions: DON'T** assume that the initial screening process weeds out potential clients for whom competency to make a Will is questionable. On the contrary, a program such as this one which caters to low income seniors will inevitably have a much higher concentration of competency questions than does the garden-variety probate practice. For many pro bono clients, both mental and physical health needs may have gone unattended due to financial limitations. For others, medication for pain due to serious or even terminal illness can seriously cloud the ability to exercise the requisite level of thought and discretion necessary to make a Will.

R.C. 2107.02 provides as follows: "A person of the age of eighteen years, or over, [of] sound mind and memory, and not under restraint[,] may make a will." The Ohio Supreme Court, in *Niemes v. Niemes* (1917), 97 Ohio St. 145, 119 N.E. 503, expounded on the test for testamentary capacity – the "sound mind and memory" part – as follows: "Testamentary capacity is shown where the testator has sufficient mind and memory to do the following:
First, to understand the nature of the business in which he is engaged;
Second, to comprehend generally the nature and extent of his property;
Third, to hold in his mind the names and identity of those who have natural claims upon his bounty;
Fourth, to be able to appreciate his relation to the members of his family."

In practical terms, it is essential to engage the client in enough conversation during the initial interview to enable you to make a determination about the foregoing items. The basic set of questions tending to shed light on a party's capacity to make a Will are those which would ordinarily be covered in any client interview, such as: "What is your name?", "What is your current address?", "What is your telephone number?", "What is your date of birth?", "What are the names and addresses of your spouse and children?", "How old are your children?", "What did you (and/or your spouse) do for a living?", "Do you own any real estate?", "Do you have any bank accounts, and if so, roughly how much money is in those accounts?", and so forth. If the answers to those questions leave you with lingering questions about your client's testamentary capacity, you should move on to the next level of questions – ones which are more directly tailored to shedding light on the client's basic lucidity and orientation. Ask questions such as: "Do you know today's date?", "Do you know where you are?" (important for patients in hospitals or nursing homes), and "Do you know why I am here?"

Certainly, an elderly client's inability to recite his or her child's address or telephone number from memory does *not* mean that the client fails the test for testamentary capacity. Care should also be taken not to mistake difficulties in communicating (as in the case of stroke victims) for lack of capacity to make a Will. However, a client who is unsure whether his or her children live in town or out-of-state, who is several years off in stating today's date, and who believes he or she still owns several pieces of property that have been long since disposed of is very likely to lack the

requisite mental capacity to make a valid Will. Before proceeding any further with the representation of such a client, you should bring this situation to the attention of the pro bono committee.

One important factor further complicates this determination, however. Once you receive answers to all of the questions you pose to the client, how do you determine whether they are correct or incorrect? The client's children are one possible source of confirmation, but if there is any hint of undue influence or animosity between parent and child, you should avoid basing your decision on information gained from that child. A guardian or other unrelated caregiver, assuming he or she is not named by the client as a beneficiary, might be a good source of information. Most importantly, for clients in hospitals or nursing homes, try to enlist the assistance of medical personnel – doctors or nurses attending the client – in determining whether the client is sufficiently oriented to know who he or she is, what he or she owns, and who are his or her "natural" heirs. Whatever your sources of information, make sure to keep good notes and make them a part of the client's file.

8. **Reducing the Likelihood of a Will Contest: DO** be cognizant of situations and Will provisions that might make a Will contest more likely. The attorney engaged in representing a client in the preparation of his or her Last Will and Testament is more than a mere scrivener. The attorney is an adviser with a duty to inform the client of any red flags the attorney perceives which might cause problems when it comes time to administer the Will. For example, assume the client is the mother of four adult children, three of whom she wishes to share equally in her estate. The fourth, she directs, is to get nothing. Disinheriting the "natural objects" of one's "bounty" is one of the most common sources of Will contests. This is certainly not to say that you should advise the client that she *must* leave some of her assets to the rebel child. A testator is perfectly entitled to disinherit whomever he or she pleases (with the possible exception of dower rights to a surviving spouse). However, to make bequests to the first three and remain silent regarding child number four can lead to the assumption that the fourth was inadvertently omitted. Voila! A Will contest is born. A simple explanation such as "I intentionally leave nothing to my remaining child, Johnny Nogood, as I have assisted him financially to a significant degree during my lifetime" will make clear that the omission was no oversight. On the other hand, make sure not to let the testator go too far in describing the reasons for disinheriting a particular person. Excessive recitations of bitterness or dislike for a relative could lead to a judge or jury in a Will contest to question whether the testator was so consumed with irrational anger or bitterness as to be incompetent to make a Will. *See Kammann v. Kammann,* 6 Ohio App. 455 (1916) (Testamentary capacity lacking where testator is unable to make rational choice in identifying the proper objects of his bounty).

Other such red flags include: a Will which leaves significant value to non-relatives (caregivers, for example, are often suspected of undue influence by disappointed heirs) and a Will which drastically changes the disposition called for in a prior Will.[3] In either situation, the client's wishes should be reflected accurately, but in a manner that

[3] *Avoiding a Will Contest, supra* at 10-13.

demonstrates that these choices were made rationally and with deliberate and careful thought.

9. **Undue Influence: DON'T** allow children, spouses or other interested parties to exercise undue influence over the client during the Will-making process. The ideal situation, of course, is for the attorney(s) to be alone with the client during the entire interview process to avoid improper influence or even the mere appearance of it. However, sometimes that is impractical or even impossible. In some situations, especially those involving severe and debilitating illnesses, the client's ability to communicate clearly and effectively can be impaired. The mere inability to speak clearly should not be confused with lack of competency. In such situations, it may be essential to have a child, close friend or caregiver remain in the room to assist with "translation." While it would be better if that person were not a beneficiary under the Will you are about to draft, there are times when that is simply not possible. At the very least, make sure to have at least a few moments alone with the client at the conclusion of the interview process. Ask a series of yes or no questions that can be answered with a nod or shaking of the head, such as: "Does the information that Mr. X [or Ms. Y] gave me just now on your behalf accurately reflect your assets and your wishes?" or "Is there anything that we have not discussed that you'd like to talk about, perhaps even without Mr. X [or Ms. Y] present?"

10. **Clients with "Special Needs": DO** plan for accommodating any special needs of the client in advance of the Will execution ceremony. This can be as simple as making sure to allot sufficient time to read the document in great detail to a blind client. In the case of a client so weakened by age or illness that he or she physically cannot write his or her name, be sure to determine during the initial interview whether the client will be able to make an "X" or other mark, or whether he or she will be totally incapable of any kind of physical act to execute the Will. In the former instance, the attorney may proceed with the execution ceremony in essentially the same fashion as with a client who can write his or her full name. However, once the attorney returns to the office with the signed Will, the words "HIS MARK" or "HER MARK" should be typewritten on either side of the "X" or other mark made by the testator at the conclusion of the Will (*E.g.*, HIS **X** MARK).

In the latter instance, however, in cases where the client is either paralyzed or otherwise completely incapable of making even the simplest mark on the page, the attorney should bear in mind that Ohio Revised Code §2107.03 provides that a Will must be signed by the testator *"or by some other person in such party's presence and at his express direction"*. Relevant case law makes clear that one of the two witnesses to the Will may also serve as the "other person" referred to in the statute and may sign the testator's name. The important point here is that the testator must be *very* clear in his or her directive to the person who will be signing the testator's name. You will also want to review carefully the paragraph which precedes the signatures of the testator and the witnesses to determine if revisions need to be made to reflect this somewhat unorthodox method of execution of the Will.

11. **The Will Execution Ceremony: DON'T** underestimate the value of the ceremonial aspects of the execution of the Will. First and foremost, a certain degree of ceremony is expected by the client. While you may have drafted 2000 Wills in your career, there is an equally good chance that this may be the first one your client has signed. Taking the time to preside over the Will's execution in a careful and somewhat formal manner will instill confidence in an uneasy client. Secondly, in the unfortunate event of a Will contest in the future, you may be called upon to testify as to your recollection of the Will execution ceremony. You will be much more likely to be able to testify with confidence that you made certain statements to the testator and received certain affirmations from him or her at the time of execution of the Will if you make it a habit to *always* observe a particular set of ceremonial formalities.

Accordingly, it is important to take the time to go over the Will in some detail with the client before the signing begins. Once you have done so, ask the client if the Will, as drafted, accurately reflects his or her wishes. Assuming the answer is "yes," gather the witnesses into the room (if they are not already present). Ask the client again to affirm in the presence of the witnesses that the Will accurately reflects his or her wishes. Then, when the client is ready to sign, you may want to read or paraphrase the language of the Will that immediately precedes the testator's signature line (it usually begins with "In Witness Whereof" or some other equally legal-sounding jargon). Have the client sign the Will as he or she customarily signs important documents such as checks, tax returns, insurance paperwork and the like. If that name differs wildly from the name you have typed on the Will,[4] or if it differs significantly from the client's given or "legal" name, you may want to type an "AKA" clause under the signature line to avoid confusion. Whatever the situation, your goal is to have the client sign in a manner most likely to eliminate doubt as to whether the client actually signed the Will.

It is also a good idea to have the client sign (or initial) and date each page of the Will, in addition to the signature at the conclusions of the Will. This lessens the likelihood that pages will be substituted in the future. More importantly, it lessens the likelihood that someone will allege that pages were substituted in order to defeat an otherwise valid Will.

Once the client has signed, ask him or her to declare that the document is his or her Last Will and Testament, and that the client wishes the individuals present to sign as witnesses. The witnesses may then commence signing. Make certain that they not only sign, but also print their names. Further, make sure they complete the "residing at" line next to their signatures.

12. **Storage/Safekeeping of the Original Will: DO** give the client careful instructions, both in person and again in the closing letter, about what to do with the signed original Will and any other documents you have prepared for the client to execute. Until recently, the law required all safe deposit boxes to be instantly sealed upon the death of the owner until the contents could be inventoried by a representative of the

[4] Try to ascertain during the initial interview how the client will be signing and make sure that name is typed underneath the signature line.

county auditor's office. Often times, the auditor's office would not schedule this "lockbox opening" until the estate had been opened. The probate court usually preferred to have the original Will submitted at the time the estate was opened. Thus, contrary to the inclinations of most clients, the safe deposit box was one of the *worst* places to keep one's original Will. Although this procedure has now changed and the safe deposit box is no longer "sealed" upon the owner's death, there are nevertheless still some reasons not to recommend that an original Will be placed there.

Fundamentally, a Will needs to be accessible both before and after the testator's death. Prior to death, the testator needs to be able easily and regularly to review the document to make certain that changes in circumstances or attitudes have not made its provisions obsolete.[5] Although a well-drafted Will will be flexible enough to be relevant despite a number of changes in the testator's life, there are some situations in which either a codicil or a completely new Will are indicated. If a Will is to be placed in a safe deposit box, make certain to advise the client to maintain a photocopy of the Will (clearly marked as such) in an obvious place in the client's home, where the client (and after his death, his executor or heirs) can quickly locate it. It is a good idea to place a notation on the face of the photocopy similar to the following: "Original of this instrument located in safe deposit box No. 515, First National Bank". Otherwise, if the client has a fireproof safe or strongbox in his or her home, this is a good place to advise the client to keep the original Will. Even in this instance, however, it is still wise to keep a photocopy in an "obvious place," with a notation on its face as to the whereabouts of the original. Finally, it is also good to suggest that the client provide his or her named executor with a photocopy of the Will.

Jennifer\pro bono\seminarmatls.doc

[5] Consider advising the client to select an easy-to-remember date on which to do an annual review of the will to make certain that changes are not needed. Probably the best candidates for such a date are the client's birthday and NewYear's Day.

LIVING WILLS
HEALTHCARE
POA'S

Living Wills

I. STATE STATUTES

- **O.R.C. §§ 2133.01 et seq.**

II. INTRODUCTION

A living will is a document that expresses one's desires concerning the administration, withdrawal, and/or withholding of life-sustaining medical treatment. There must be no reasonable possibility that the patient will regain the capacity to make decisions regarding their health. A living will becomes the expression of a patient's desires when the patient at the time of treatment is unable to communicate his or her wishes concerning the administration, commencement, or continuation of life-sustaining treatment.

***NOTE:* The United States Supreme Court indicated in *Cruzan v. Director, Missouri Dept. of Health* that living wills should be recognized.**

III. OHIO LAW ON LIVING WILLS

In 1991, the Ohio General Assembly passed the Modified Uniform Rights of the Terminally Ill Act, recognizing living wills in Ohio. [O.R.C. § 2133.01 *et seq.*] A written living will, voluntarily created in Ohio prior to Oct. 10, 1991, with certain exceptions, is an effective declaration. [O.R.C. § 2133.15].

A. Requisites for Validity

To be valid, a living will must:

- Be signed by the declarant, or another at the declarant's direction;
- Set forth the date of the signing;
- Be witnessed by two adults (or acknowledged by a notary public.)
- There must be a statement in capital letters or other conspicuous type setting forth the patient's intent to create a living will.

O.R.C. § 2133.02 (Rev. by 2000 H 494, eff. 3-15-01)

We honor other states LW, however there is a time delay recognized at anytime.

Witnesses. Witnesses cannot be:

- related by blood, marriage, or adoption to declarant:
- the attending physician of the declarant:
- the administer of the nursing facility where the declarant is receiving care.

- They must attest that declarant appears to be of sound mind, and not under or subject to duress, fraud, or undue influence.
- Signatures of declarant or other individual at the direction of the declarant, and of witnesses to the declaration are not required to appear on the same page.

[O.R.C. § 2133.02(B)(1) Rev. by 2000 H 494, eff. 3-15-01]

Notarization. The living will must either be acknowledged before a notary public, or witnessed by two (2) individuals.

Communication to Physician. To become operative, a living will must be communicated to the attending physician, who must certify that the declarant is not able to make informed health care decisions for him or herself, and that there is no reasonable possibility of regaining that capacity. [O.R.C. § 2133.03]

ADVOCACY TIP: Make certain that the patient's attending physician has a copy of the living will. Family members, neighbors, spiritual advisors, or others who may be involved should also know where copies of the living will are located.

Condition of Patient. Further, before refusing or withdrawing life-sustaining treatment pursuant to a living will, the attending physician and one other physician who has seen the declarant must determine that he or she is in a "terminal condition" or in a "permanently unconscious state," whichever is addressed by the living will (and both can be). [Ohio Rev. Code §§ 2133.02(A) and (B)]

NOTE: A "terminal condition" is an irreversible, incurable, and untreatable condition caused by disease, illness, or injury. This is based on the prognosis of the attending physician and one other physician who has examined the declarant. They must determine to a reasonable degree of medical certainty that: (1) there can be no recovery, and (2) death is likely to occur within a relatively short time if life-sustaining treatment is not administered. [O.R.C. § 2133.01 (AA)].

NOTE: "Permanently unconscious state" requires the attending physician and one other physician who has examined the declarant to determine to a reasonable degree of medical certainty, both: (1) declarant is irreversibly unaware of him or herself and environment and (2) there is a total loss of cerebral cortical functioning, so that declarant has no capacity to experience pain or suffering. [O.R.C. § 2133.01(U)].

Refuse Nutrition and/or Hydration. The living will must expressly indicate in capital letters or other conspicuous type, the declarant's desire to refuse nutrition and/or hydration. The declarant must separately initial or sign this part of the living will. [O.R.C. § 2133.02(A)(3) Rev. 2000 H 494, eff. 3-15-01]. If the living will is properly created, artificially or technologically supplied nutrition or hydration may be refused or withdrawn if the attending physician and one other physician who has examined the declarant determine both (1) that the declarant is in a terminal condition or permanently unconscious state and (2) nutrition or hydration will not provide comfort or alleviate pain. [O.R.C. § 2133.03(A)(1) & 2133.12(E)(1)].

Revocation

A living will may be revoked at any time and in any manner. If the attending physician is aware of the living will, the revocation is effective when he or she learns that it has been retracted. The attending physician can learn of the revocation from the declarant, a witness to the revocation, or health care personnel told of the revocation by a witness. [O.R.C. § 2133.04]

Refusal to Comply

Physicians and health care facilities may refuse to comply with a living will on the grounds of conscience or otherwise. If providers do refuse to comply with a living will they cannot try to prevent or delay the declarant's transfer to a facility or provider who will honor the living will. Providers must notify patients as early as possible of their policies concerning advance directives. [O.R.C. §§ 2133.02(D), 2133.03(A)(1) and 2133.10] Patients should discuss treatment options and wishes with their doctors before the need for medical decisions arises.

If the doctor does not agree with the patient's wishes, it may be necessary to find a new doctor before a problem develops.

Procedure Under Operative Living Will

When a living will becomes operative, the attending physician must record all required determinations in the patient's medical record. A living will declaration supersedes a Do Not Resuscitate Identification Order that is inconsistent with the living will. [O.R.C. § 2133.03(B)(1)(6)]

Required Notice. The attending physician must notify certain persons of the determinations made. If the living will states whom to notify, those people must be contacted. If not, the attending physician must notify at least one of the following persons, in the following prioritized order;

1. Guardian;
2. Spouse;
3. Adult children who are reasonably available;
4. Parents;
5. A majority of adult brothers or sisters who are reasonably available.
6. The attending physician must record the names of the people notified. If the physician cannot notify any of the specified person(s), he or she must record the efforts made to try to reach them. [O.R.C. § 2133.05(A)]

Objections. After notifying an appropriate person the attending physician must give that person time to object to the implementation of the living will. Someone wishing to object must do so to the attending physician within 48 hours of the physician completing the notification process. The objector must then file an action in probate court within two business days after making the objection to the physician or the objection is considered void.

Inadequate Comfort Care. If at any time, a person named in the living will, or in the first two classes of persons to be notified believes that the declarant is not receiving proper comfort care, that person may also bring an action in probate court. [O.R.C. § 2133.12(E)(2)]. No one else may bring a court action questioning a living will's implementation. [O.R.C. § 2133.05 (B)(3), 2133.09(C)(3)].

Filing and Service of Complaint. Once filed in probate court, a timely complaint must be served within three days after the filing of the complaint on the attending and consulting physicians, any health care facility, and any persons notified by the physician. [O.R.C. § 2133.05(B)(2)(g) & 2133.05(B)(4)(a)].

Hearing. The court must hold a hearing within three business days after those individuals listed in the previous paragraph are served the complaint. [O.R.C. § 2133.05(B)(4)(a)].

Living Wills and Health Care Powers of Attorney

ISSUE CONTENTS

Documented last updated 6/19/2001.

What is a living will declaration?

A living will is a legal document you can complete now that declares what your wishes are regarding the use of life-sustaining treatment if you should become terminally ill or permanently unconscious. A living will:

- becomes effective only when you are unable to communicate your wishes and are permanently unconscious or terminally ill;
- spells out whether or not you want life-support technology used to prolong your dying;
- gives doctors the authority to follow your instructions regarding the medical treatment you want under these conditions;
- can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else;
- will be followed for a pregnant woman only if certain conditions apply; and
- specifies under what conditions you would want artificial feeding and fluids to be withheld.

What is a durable power of attorney for health care?

A durable power of attorney for health care is a legal document that authorizes another person to make health care decisions for you if you are unable to make informed health care decisions for yourself.

A durable power of attorney for health care:

- names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself - whether or not your condition is terminal;
- becomes effective only when you cannot make your own decisions regarding treatment;
- requires the person you appoint to make decisions that are consistent with your wishes; and
- will not overrule a living will in the event you have both documents.

I don't know about life-support equipment, or what treatment I'd want. How do I get more information?

Each of us has the right to learn about our options and should assume responsibility for our own health care decisions. It is important to talk to your doctor and get your questions answered.

If I have a living will, do I need a durable power of attorney for health care too?

Many people will want to have both documents because they address different aspects of your medical care. A living will gives your instructions directly to your doctor and it applies only when you cannot communicate your wishes and are in a terminal condition or are permanently unconscious.

A durable power of attorney covers a wide range of health care decisions - like approving surgery or changing doctors after an accident - that do not require a patient to be dying.

Often a spouse or relative is selected to act on your behalf when you cannot, because they know you well enough to know what you would want done.

If my living will says I don't want to be hooked up to life-support equipment, would I still get pain medication?
Yes. A living will only affects care that artificially or technologically postpones death. It would never affect care that eases pain. For example, you would continue to receive oxygen and medical care that includes pain medication, spoon feeding and being turned over in bed.

Can I specify that I do not want cardiopulmonary resuscitation (CPR)?
Yes. You may include a clause authorizing a "DNR order" in your living will. DNR stands for "do not resuscitate." The standard form for living wills now includes such a DNR provision. This living will DNR is useful for conveying your wishes to family members and medical staff; however, it will not be activated unless two doctors have agreed that you are either terminally ill or permanently unconscious, and your personal doctor has agreed that you can no longer express your wishes regarding health care. Your attorney can help answer questions about DNR orders and the provisions concering DNR that may be included in a living will. For more information about DNR orders, see the publication, "What you should know about...DNR Orders," published by the Ohio State Bar Association.

Who decides that I am dying or permanently unconscious without hope of recovery?
If you've indicated that you don't want your dying to be artificially prolonged, two doctors who have examined you must agree that you are beyond any medical help and that you will not recover.

A living will may be important for a senior citizen, but why is this a priority for someone in their twenties?
A living will is designed to give you and your family peace of mind whether you are 25 or 75 years of age. Traffic accidents are the leading cause of death among Ohioans under the age of 45. When Nancy Cruzan was 25 years old, she was thrown from a car and went into an irreversible coma. Because she didn't have a living will or durable power of attorney, her family had to struggle in the courts, including the United States Supreme Court, for seven years before life-support machines could be turned off.

Would my family be notified before doctors stop life-support treatments?
It is very likely your family would be informed. Although doctors do not need your family's permission to follow the instructions provided through your living will, they are required to make reasonable efforts to notify a person named in your living will, or a family member, before following your instructions to withdraw life-support. If that person feels your living will isn't being properly followed, or isn't legally valid, an immediate hearing can be scheduled in probate court to determine if there are legal grounds not to follow your instructions. By law, no one can change or overrule your living will if it was freely and correctly executed.

If my condition becomes hopeless, can I specify that I want my feeding and fluid tubes removed?
No special instructions are needed to allow the withholding of nutrition and hydration if you are in a terminal condition and they don't provide you with comfort or relieve your pain. However, if you want to allow your doctor to withhold artificial nutrition/hydration if you are permanently unconscious, your document needs to expressly state this.

My mother is in a nursing home. If she gave me her durable power of attorney for health care, could I act on her behalf in every area affecting her treatment?
Yes, but not until she is no longer able to make those decisions on her own behalf. A durable power of attorney for health care covers not just life-sustaining treatment, but all aspects of medical treatment once the patient is unable to express his or her own wishes. A regular power of attorney over a relative's business affairs doesn't apply to medical

If I want to designate someone to make health care decisions for me, must it be a member of my family?
No. You may appoint any adult you wish as long as it isn't your doctor or the administrator of a health care facility in which you are being treated.

I had a durable power of attorney for health care before the 1991 law went into effect. Do I need a new one?
You may. Check with your attorney to make sure that the document you have includes specific language that is required under the 1991 law.

Where can I find the standard forms for a living will or a health care power of attorney? Can I draw up my own?
The Ohio State Bar Association has developed standard forms with the Ohio Hospice & Palliative Care Organization, the Ohio State Medical Association, and the Ohio Hospital Association to make it easier for the people who choose to have these documents. You may obtain a copy of these forms by mailing a request along with $3 to the Ohio Hospice & Palliative Care Organization at 1646 W. Lane Ave., Suite 2, Upper Arlington, Ohio 43221.

You do not have to use the standard forms. However, for either document to be valid, it must include specific language spelled out in the Ohio Revised Code. Your physician and attorney will have copies of the standard forms, as will many organizations.

What do I do after I fill out a living will declaration or form for a durable power of attorney for health care?
Make several copies. Give one to a trusted member of your family. Keep another with your personal papers. Leave copies with your physician and your lawyer, and, perhaps, your clergy person.

Can I have documents saying that if I become critically ill, I want treatment to be continued using every available means to keep me alive?
Yes, but you should talk to an attorney. You will not be able to use the standard forms for the documents. You should also talk to your physician about the effect of your decision.

Definitions
Ohio's Living Will Law uses several words that have meanings that might be helpful to explain here.

Life-sustaining treatment - any medical procedure, treatment, intervention or other measure that when administered to you serves principally to prolong life.

Hydration - fluids that are artificially or technologically administered through tubes.

Nutrition - refers to food that is artificially or technologically administered through tubes.

Permanently unconscious - to a reasonable degree of medical certainty: (1) you are irreversibly unaware of yourself or your environment; and (2) there is total loss of cerebral cortical functioning - which results in your having no capacity to experience pain or suffering.

Terminal condition - an irreversible, incurable and untreatable condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty: (1) there can be no recovery; and (2) death is likely to occur within a short period of time if life-sustaining treatment is not administered.

Comfort care - nutrition and/or hydration when administered to diminish pain or discomfort, but not to postpone death; and any other medical care that diminishes pain or discomfort - like pain medication and turning a patient - but does not postpone death.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE (DPAHC)

I. Introduction

A. WHAT IS A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

A DPAHC enables one person (the principal) to give to another, the attorney-in-fact (agent), the power to make most health care decisions for the principal. The DPAHC is effective only when the principal's attending physician determines that the principal has lost the capacity to make informed health care decisions. The agent may only act upon the instrument if it complies with O.R.C. § 1337.12. Even after executing a DPAHC, the principal retains the right to make health care decisions as long as he/she has the capacity to give informed consent. O.R.C. § 1337.13(A)(1).

B. GOALS OF A DPAHC

A DPAHC has two goals, which it must accomplish in a clear and legally effective manner. First, it must clearly reflect the principal's values and health care decision-making desires. Second, it must designate another person to make the principal's health care decisions when the principal has lost the capacity to make informed health care decisions.

C. PROS AND CONS OF GENERIC FORMS VERSUS INDIVIDUALIZED DIRECTIVES

Because they are easy to execute, generic forms are useful for many clients who otherwise would not execute and advance directive. However, the client should ensure that his/her own individual values and preferences are reflected in the generic values and preferences of the forms. All generic forms provide the agent the same authority as an individualized form. However, many forms, such as the generic form approved by the Ohio State Bar Association and the Ohio State Medical Association, do not provide any direction as to how the client would want particular health care decisions to be made.

D. MAXIMIZING THE ODDS THAT THE ADVANCE DIRECTIVE WIIL BE HONORED

A DPAHC is of little value unless the health care provider, agent, and family members know of the advance directive and abide by it. The client and the attorney should discuss and give a copy of DPAHC to the agents who are willing and able to serve. Likewise, the attorney and client should hold similar discussions with the client's physician and family members and give them their own copies of the DPAHC. The time when the DPAHC is to be implemented is not the time to resolve physician and family members concerns. Rather, it is far preferable to resolve such concerns when the client is capable of explaining his/her wishes.

II. Creation of the DPAHC

A. EXECUTION REQUIREMENTS

The DPAHC shall be signed or acknowledged at the end by the principal and shall state the date it was signed or acknowledged. O.R.C. § 1337.12 (A)(1)(a) Rev. by 2000 H 494, eff. 3-15-01. The DPAHC must also be either acknowledged before a notary public or signed by at least two eligible adult witnesses who are present when the principal signs or acknowledges his/her signature. O.R.C. §§ 1337.12 (B) & (C).

B. WITNESS LIMITATIONS

The following persons may not be witnesses:

(1) any person related to the principal by blood, marriage, or adoption;
(2) the agent;
(3) the attending physician; and
(4) the administrator of any nursing facility where the principal is receiving care.

O.R.C. § 1337.12(B).

C. WITNESS ATTESTATION

Each witness, with his/her signature, attests to his/her belief that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

D. AGENT ELIGIBILITY

Generally, the principal may designate any competent person who is eighteen years of age or older as his/her agent. However, the following individuals may not serve as agents:

(1) the principal's attending physician;
(2) the administrator of any nursing facility where the principal is receiving care;
(3) any employee or agent of the attending physician or health care facility treating the principal. Such employees or agents may serve as the agent, if they are related to the principal by blood, marriage, or adoption or if they are of the same religious order as the principal. O.R.C. § 1337.12(A)(2).

E. DPAHC's CREATED ELSEWHERE OR BEFORE OCTOBER 10, 1991

Any DPAHC created between September 27, 1989, and October 10, 1991, is valid, if it meets the requirements of Ohio's first DPAHC law that took effect September 27, 1989. 144 v S 1. Eff. 10/10/91

A DPAHC executed in another state that substantially complies with the law of Ohio or of that state is also valid. O.R.C. § 1337.16(G).

F. DURATION OF DPAHC

A DPAHC has no expiration date, unless the principal specifies an expiration date in the DPAHC. If the principal lacks the capacity to make informed health care decisions on the expiration date, DPAHC will remain in effect until the principal regains that capacity. O.R.C. § 1337.12(A)(3).

III. Authority of Agent

A. WHEN DPAHC OPERATIVE

The attending physician must determine that the principal has lost the capacity to make informed health care decisions for him or herself. O.R.C. § 1337.13(A)(1).

B. STANDARDS GOVERNING DECISION MAKING BY THE AGENT

The agent must act consistent with the principal's desires or, if those desires are unknown, then act in the principal's best interest. Subject to any specific limitations in the DPAHC, the agent generally is authorized to make health care decisions for the principal to the same extent the principal could make those decisions him/herself if he/she had the capacity. This generally includes the authority to give informed consent, refuse to give informed consent, and withdraw informed consent to any health care.

C. WITHDRAWING CONSENT TO CARE THAT THE PRINCIPAL PREVIOUSLY AUTHORIZED

The agent cannot withdraw informed consent to care the principal authorized, unless:

(1) a change in the principal's condition has significantly decreased the benefit of that care to the principal, or;
(2) the health care is not, or is no longer, significantly effective in achieving the purpose for which the principal consented to it. O.R.C. § 1337.13(F).

IV. Refusing or Withdrawing Life-Sustaining Care

A. ATTENDING PHYSICIAN DETERMINATIONS

The agent may not refuse or withdraw informed consent to life-sustaining care unless, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, the attending physician determines that:

(1) the principal is not capable of making informed health care decisions. O.R.C. § 1337.13(A)(1), and;
(2) there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions. O.R.C. § 1337.13 (B)(3).

B. ATTENDING PHYSICIAN AND EXAMINING PHYSICIAN DETERMINATION

The agent may not refuse or withdraw informed consent to life sustaining care unless, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, the attending physician and another physician who has examined the principal determine that the principal is in a terminal condition or a permanently unconscious state. O.R.C. § 1337.13(B)(1).

(1) "Terminal Condition" means:
   a. there can be no recovery, and;
   b. death is likely to occur within a relatively short time without life-sustaining treatment. O.R.C. § 1337.11(Y)(2).

(2) "Permanently unconscious state" means:
   a. the principal is irreversibly unaware of him/herself and his/her environment, and;
   b. the principal has totally lost cerebral cortical functioning and cannot experience pain or suffering. O.R.C. § 1337.11(T).

V. Refusing Food and Fluids

A. PATIENT CONDITION

The agent may not refuse or withdraw informed consent to artificially or technologically supplied nutrition or hydration, unless the patient is in a terminal condition or a permanently unconscious state. O.R.C. § 1337.13(E). The agent does not have the authority to refuse or withdraw informed consent to nutrition or hydration if the principal is pregnant and termination of these services will terminate the pregnancy, unless the pregnancy poses a substantial risk to the principal. O.R.C. § 1337.13(D).

B. ATTENDING PHYSICIAN AND EXAMINING PHYSICIAN DETERMINATIONS

The agent may not refuse or withdraw informed consent to artificially or technologically supplied nutrition or hydration, unless the attending physician and at least one other physician who has examined the patient determine, to a reasonable degree of medical certainty, that the nutrition or hydration will no longer:

(1) serve to provide comfort to the principal, or;
(2) alleviate the principal's pain. O.R.C. § 1337.13(E)(1).

C. COMFORT CARE

The agent may not refuse or withdraw informed consent to comfort care. O.R.C. § 1337.13(C). "Comfort care" means nutrition, hydration, or any other measure taken to diminish pain or discomfort, that will not postpone the principal's death. O.R.C. § 1337.11(C).

D. PERMANENTLY UNCONSCIOUS STATE

If the patient is in a permanently unconscious state, the agent may not refuse or withdraw informed consent to artificially or technologically supplied nutrition or hydration, unless:

(1) the DPAHC states in capital letters that the agent may refuse nutrition or hydration, and;
(2) the patient has checked or marked a box or line next to the statement and initialized or signed next to the box or line. O.R.C. § 1337.13(E)(2).

VI. Implementation of the DPAHC

A. OBLIGATION OF DOCTORS AND HEALTH CARE FACILITIES TO COMPLY

Physicians and health care facilities may refuse to comply with the instructions of the agent. O.R.C. § 1337.16(B)(1).

However, they may not attempt to prevent or unreasonably delay the principal's transfer to a physician or health care facility that is willing to comply or allow compliance. O.R.C. § 1337.16(B)(2)(a).

B. LIFE-SUSTAINING CARE DECISIONS

If the principal is in a terminal condition or permanently unconscious state and the agent makes a decision pertaining to life-sustaining treatment, then the attending physician must record the physician's determinations in the principal's medical record. O.R.C. § 1337.16(D)(1)(a). The attending physician must also make a good faith effort to notify the appropriate individuals, in the following order of priority classes, of the health care decision:

(1) the principal's guardian, if any;
(2) the principal's spouse;
(3) the principal's adult children who are reasonably available;
(4) the principal's parents;
(5) a majority of the principal's adult brothers and sisters who are reasonably available. O.R.C. § 1337.16(D)(1)(b).

VII. Objecting to the Life-Sustaining Care Decision

A. PERSONS WHO MAY OBJECT:

Any notified individual may object, and a majority of the individuals in the next lower class also have 48 hours to object after the priority class is notified. O.R.C. § 1337.16(D)(3)(b). If at any time, a priority class member or a majority of the next lower class believes that that principal is not receiving proper comfort care, he/she or they may also commence an action in probate court. O.R.C. § 1337.16(E).

B. HOW SOMEONE OBJECTS:

Any notified individual has 48 hours from receipt of the notice to advise the attending physician whether he/she objects. The objecting individual has two business dates after that to file a complaint in the probate court of the county where the principal resides. If no timely complaint is filed, any objection is considered void. O.R.C. § 1337.16(D)(3)(b).

C. PROBATE COURT PROCEEDINGS

(1) Notice and hearing

Within three days, if possible, of a complaint being timely filed, the court will serve notice of a hearing on the following parties who are to be listed as defendants:

a. the attending and consulting physicians;
b. the agent;
c. any health care facility in which the principal is confined, and;
d. any individuals notified of the agent's decision by the attending physician. O.R.C. § 1337.16(D)(4)(g).

The hearing will occur at the earliest possible time, but no later than the third business day after the notice is served. O.R.C. § 1337.16(D)(6)(a).

(2) Possible court orders.

The court can:

a. order the attending physician to reevaluate the principal;
b. order the agent to act consistent with the principal's desires or, if they are unknown, the principal's best interest, or;
c. invalidate the DPAHC, because it expired or was not voluntarily and competently executed. O.R.C. § 1337.16(D)(4)(d).

VIII. Revocation and the Requirement of or the Prohibition of DPAHC's

A. REVOCATION

The principal has the right to revoke the agent and the right to revoke the entire DPAHC in any manner. However, if the principal made the attending physician aware of the DPAHC, the revocation will be effective only when:

(1) the principal tells the attending physician, or;
(2) a witness to the revocation, or other health care personnel told of the revocation by a witness, tells the attending physician. O.R.C. § 1337.14(A).

B. REQUIRING OR PROHIBITING THE CREATION OF A DPAHC

No one may be required to sign, refrain from signing, or revoke a DPAHC as a condition of being admitted to health care facility, receiving health care, being insured, or receiving benefits. O.R.C. § 1337.16(A).

IX. Agent and Provider Liability

A. AGENT LIABILITY

The agent is not liable for making good faith decisions under the DPAHC. O.R.C. § 1337.15(G).

B. CONSULTING PHYSICIAN AND HEALTH CARE PERSONNEL LIABILITY

The consulting physician and any health care personnel are not liable for good faith actions taken under the attending physician's direction. O.R.C. § 1337.15(E) & (F).

C. ATTENDING PHYSICIAN LIABILITY

The attending physician is not liable for good faith actions when:

(1) the agent receives information sufficient for informed consent, and the physician believes the agent is authorized to make the decision;
(2) the attending physician believes the decision is consistent with the principal's desires or best interest;
(3) the attending physician determines the principal has lost the capacity to make informed health care decisions, and;
(4) if the decision concerns life-sustaining treatment, the requirements of O.R.C. § 1337.16(D) are met. O.R.C. § 1337.15(A).

D. NEGLIGENCE AND MALPRACTICE

All health care providers remain liable for negligence or deviations from reasonable medical standards that cause the principal injury or death. O.R.C. § 1337.15(H).

Do Not Resuscitate (DNR) Orders

ISSUE CONTENTS

Documented last updated 4/1/2001.

In Ohio there are several legally-recognized ways for you to give doctors and other health care providers instructions about the medical treatment you wish to receive (or do not wish to receive) -- before you actually need the care. You may have heard about "advance directives" such as "living wills" and "health care powers of attorney." Ohio law also recognizes another tool to help you and your physician do effective health care planning for the end of life. It is called a DNR order.

What does DNR mean?

DNR stands for "do not resuscitate." A person who does not wish to have cardiopulmonary resuscitation (CPR) performed may make this wish known through a doctor's order called a DNR order. A DNR order addresses the various methods used to revive people whose hearts have stopped functioning or who have stopped breathing. Examples of these treatments include chest compressions, electric heart shock, artificial breathing tubes, and special drugs.

Under its DNR Comfort Care Protocol, the Ohio Department of Health has established two standardized DNR order forms. When completed by a physician (or certified nurse practitioner or clinical nurse specialist, as appropriate), these standardized DNR orders allow patients to choose the extent of the treatment they wish to receive at the end of life. A patient with a "DNR Comfort Care-Arrest Order" will receive all the appropriate medical treatment, including resuscitation, until the patient has a cardiac or pulmonary arrest, at which point only comfort care will be provided. By requesting the broader "DNR Comfort Care Order," a patient may reject other life-sustaining measures such as drugs to correct abnormal heart rhythms. With this order, only comfort care would be provided at a point even before the heart or breathing stops. Your doctor can explain the differences in DNR orders.

Does everyone want CPR?

Although in some cases it does save lives, CPR (cardiopulmonary resuscitation) frequently is not successful or does not benefit those who receive it, especially for elderly people or those with serious medical conditions. Even if the person is revived, he or she can be left with painful injuries or in a very debilitated state. Resuscitation can involve such things as drugs, forcefully pressing on the chest, giving electric shocks to restart the heart or placing a tube down the nose or throat to provide artificial breathing. People with terminal illnesses or other serious health conditions may prefer to "die with dignity" instead of being resuscitated when the end comes. For more information about the pros and cons of CPR and whether it is right for you, talk with your doctor.

How do I make my wishes about CPR known? How do I get a DNR order?

If you **do** want to receive CPR when it is medically appropriate, you don't have to do anything. Emergency squads and other health care providers must provide CPR whenever medically appropriate. If you do **not** want CPR, you always have the right to refuse it (or any other medical treatment), but most likely you won't be able to state your wishes when an emergency happens. Therefore, if you do not want CPR, you should discuss your wishes with your doctor and ask your doctor to write a DNR order -- a medical order saying that CPR should not be given.

The doctor will explain the different ways the order can be written and may use one of the Ohio Department of Health's two standard DNR order forms. Your doctor is not required to use a standard form. However, an advantage to using a standard form is that it is easily

recognized by paramedics and other health care workers.

Why has Ohio adopted a new law about DNR?
Because Ohio's 1991 Living Will Law focused on patients in hospitals and nursing homes, there was uncertainty about the circumstances under which an emergency health care worker could act on a DNR order and honor a person's wish not to have CPR. The purpose of the 1998 DNR Law is to help people communicate their wishes about resuscitation to medical personnel outside a hospital or nursing home setting. It allows emergency medical workers to honor patients' physician-written DNR orders even if they are at home rather than in the hospital when the heart or breathing stops. The 1998 DNR Law also protects emergency squads and other health care providers from liability if they follow their patients' DNR orders outside a hospital or nursing home setting.

How will the emergency squad or anyone else know I have a DNR order?
If you are a patient in a hospital or nursing home, the DNR order should be in your medical chart. You or your family also should notify the medical staff that you have such an order any time you are admitted to a facility or are transferred from one facility to another. If you are receiving care at home, you should tell your family and caregivers where to find your DNR order. You also may want to talk with your doctor about getting DNR identification such as a wallet card or bracelet that tells medical personnel you have a DNR order.

Can anyone else override my wishes about CPR?
No. You have the right to make your own decisions about your health care. If you are not able to express your wishes, other people such as your legal guardian, a person you named in a health care power of attorney, or a family member can speak for you. You should make sure these people know your desires about CPR. If your doctor writes a DNR order at your request, your family cannot override it.

What if I change my mind after my doctor writes a DNR order?
You always have the right to change your mind and request CPR. If you do change your mind, you should talk with your doctor right away about revoking your DNR order. You also should tell your family and caregivers about your decision, mark "cancelled" on the actual DNR order, and destroy any DNR wallet cards or other identification items you may have.

What is the difference between a living will and a DNR order?
Both living wills and DNR orders deal with end-of-life decisions, but they are different. You may complete a living will document yourself even when you are healthy. Your living will document specifies in advance the kind of medical treatment you would want if and when you have a terminal illness or are in a permanently unconscious state and are no longer able to state your own wishes.

By contrast, you do not write a DNR order for yourself. Instead, you make your wishes known to your physician, who writes a DNR order if and when your condition warrants it. The DNR order addresses your current state of health and the kind of medical treatment you and your physician decide is appropriate under current circumstances.

How does a person include a DNR option in a living will?
Ohio has a standard Living Will Declaration form that is widely available. This standard form specifically allows you to direct your physician to write a DNR order for you if two doctors have agreed that you are either terminally ill or permanently unconscious and it is medically appropriate. Your attorney and your doctor can help answer questions about the living will form, including the DNR issue.

How does a health care power of attorney differ from a living will? From a DNR order?
Another kind of advance directive available under Ohio law is called the health care power

of attorney. This is a document that names another person (usually a spouse, child, or other relative) to make health care decisions for you whenever you are unable to do so yourself. These decisions could range from something as simple as whether to see a doctor to something as significant as whether to have surgery or to terminate treatment.

A living will, unlike a health care power of attorney, expresses your wishes directly to the health care provider and applies only if you are terminally ill or permanently unconscious.

A health care power of attorney is not a DNR order, although a health care power of attorney ordinarily would permit the person you appoint to agree to a DNR order for you, if you are unable to express your wishes at the time.

More information about advance directives is available in the publication, "What you should know about . . . Living Wills and Health Care Powers of Attorney," published by the Ohio State Bar Association.

How are DNR orders, living wills, and health care powers of attorney used?
A living will might be used to direct a physician to write a DNR order:
Jane decides she does not want CPR to be given to her. She obtains a living will form and fills it out properly. Later, Jane becomes debilitated and needs home health care, but she hasn't discussed resuscitation with her doctor and a specific DNR order has not been written.

One day, the visiting nurse arrives to find that Jane is not breathing. At this point, the nurse begins CPR, because a DNR order has not been written. If Jane is resuscitated and transferred to a hospital, but remains unconscious, her doctors may decide she is in a terminal condition. Jane's living will can serve as evidence that she does not want to be resuscitated in such a circumstance. Her doctor may write a DNR order so that, if Jane's heart stops beating again, she will not be resuscitated.

A health care power of attorney might be used to authorize a DNR order:
Bill decides that, under some circumstances, he would not want CPR to be given to him and informs his family of this decision. He obtains a health care power of attorney form and fills it out properly, appointing his wife to make health care decisions for him if he is unable to do so. Later, Bill is seriously injured in an accident and is moved to a hospital while he is unconscious. His doctors are made aware of the health care power of attorney, and Bill's wife informs them that Bill would not want CPR if his heart or lungs should stop functioning. The doctors write a DNR order, indicating on Bill's medical chart that he is not to be resuscitated. One day, his heart stops. Since Bill's doctor has written a DNR order, the health care workers do not resuscitate him.

A DNR order alone might be used as in the following example:
John is terminally ill and decides he does not want CPR to be given to him. He discusses his wishes with his doctor, and the doctor writes a DNR order for John on the Ohio Department of Health form, signs it, and gives it to John.

Later, John becomes debilitated and needs home health care. John informs his family of his DNR order and gives them a copy. One day, his daughter comes in and finds that John is not breathing. She becomes alarmed and calls 9-1-1. Because John's daughter shows the DNR order to the medic who arrives, the medic does not perform CPR, but does provide John with comfort care.

Can I use a general power of attorney to address my health care wishes?
No. You may have given your general power of attorney to someone to manage your financial affairs while you were on vacation or in the hospital. This general type of power of attorney usually does not address health care issues and ends if you become disabled.

If you want a general power of attorney to continue, even if you become disabled, the document must state that it is a "durable" or continuing power of attorney. A health care power of attorney is a "durable" power; it continues even after you become disabled and appoints someone to carry out your health care wishes. Health care providers will more readily recognize your power of attorney if it is in a separate document expressly addressing health care matters.

Where can I get further information? Can I draw up my own documents?
The Ohio State Bar Association, the Ohio State Medical Association, the Ohio Hospice & Palliative Care Organization, and the Ohio Hospital Association have jointly revised a standard Living Will Declaration form and a standard Health Care Power of Attorney form. These forms may be obtained from doctors, lawyers, hospitals, nursing homes, and others. You also may obtain a copy of these forms by mailing a request along with $3 to the Ohio Hospice & Palliative Care Organization, 1646 W. Lane Ave., Suite 2, Upper Arlington, Ohio, 43221, or visit that organization's Web site at http://www.ohpco.org.

You do not have to use the standard forms. For any document to be valid, however, it must meet certain requirements under Ohio law. If you wish, your lawyer can prepare a living will and/or health care power of attorney that is specifically tailored to your situation.

If you are interested in obtaining a DNR order, you will need to speak with your doctor, who can complete the appropriate forms for the order, and can tell you how to obtain a wallet card, bracelet or other DNR identification.

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STATE OF OHIO
LIVING WILL DECLARATION
(Updated September 2000)

I, _____,

presently residing at, _____ Ohio,

(the "Declarant"), being of sound mind and not under or subject to duress, fraud or undue influence, intending to create a Living Will Declaration under Chapter 2133 of the Ohio Revised Code, as amended from time to time, do voluntarily make known my desire that my dying shall not be artificially prolonged. If I am unable to give directions regarding the use of life-sustaining treatment when I am in a terminal condition or a permanently unconscious state, it is my intention that this Living Will Declaration shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment. I am a competent adult who understands and accepts the consequences of such refusal and the purpose and effect of this document.

In the event I am in a terminal condition, I do hereby declare and direct that my attending physician shall:

1. Administer no life-sustaining treatment;
2. Withdraw such treatment if such treatment has commenced; and
3. Permit me to die naturally and provide me with only that care necessary to make me comfortable and to relieve my pain but not to postpone my death.

In the event I am in a permanently unconscious state, I do hereby declare and direct that my attending physician shall:

1. Administer no life-sustaining treatment, except for the provision of artificially or technologically supplied nutrition or hydration unless, in the following paragraph, I have authorized its withholding or withdrawal;
2. Withdraw such treatment if such treatment has commenced; and
3. Permit me to die naturally and provide me with only that care necessary to make me comfortable and to relieve my pain but not to postpone my death.

_____ ☐ IN ADDITION, IF I HAVE MARKED THE FOREGOING BOX AND HAVE PLACED MY INITIALS ON THE LINE ADJACENT TO IT, I AUTHORIZE MY ATTENDING PHYSICIAN TO WITHHOLD, OR IN THE EVENT THAT TREATMENT HAS ALREADY COMMENCED, TO WITHDRAW, THE PROVISION OF ARTIFICIALLY OR TECHNOLOGICALLY SUPPLIED NUTRITION AND HYDRATION, IF I AM IN A PERMANENTLY UNCONSCIOUS STATE AND IF MY ATTENDING PHYSICIAN AND AT LEAST ONE OTHER PHYSICIAN WHO HAS EXAMINED ME DETERMINE, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND IN ACCORDANCE WITH REASONABLE MEDICAL STANDARDS, THAT SUCH NUTRITION OR HYDRATION WILL NOT OR NO LONGER WILL SERVE TO PROVIDE COMFORT TO ME OR ALLEVIATE MY PAIN.

Ohio Hospice & Palliative Care Organization
OSMA Ohio State Medical Association
Foundation for Healthy Communities
OSBA

THIS LIVING WILL DECLARATION WILL NOT BE VALID UNLESS IT IS EITHER 1) SIGNED BY TWO ELIGIBLE WITNESSES AS DEFINED BELOW WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR 2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

I attest that the Declarant signed or acknowledged this Living Will Declaration in my presence, and that the Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence. I further attest that I am not the attending physician of the Declarant, I am not the administrator of a nursing home in which the Declarant is receiving care, and that I am an adult not related to the Declarant by blood, marriage or adoption.

Signature:_____ Residence Address:_____

Print Name:_____ _____

Date:_____ _____

Signature:_____ Residence Address:_____

Print Name:_____ _____

Date:_____ _____

OR

ACKNOWLEDGEMENT

State of Ohio County of _____ ss:

On this the _____ day of _____, _____,

before me, the undersigned Notary Public, personally appeared _____,

known to me or satisfactorily proven to be the person whose name is subscribed to the above Living Will Declaration as the Declarant, and acknowledged that (s)he executed the same for the purposes expressed therein. I attest that the Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence.

My Commission Expires:_____ _____

Notary Public

NOTE: YOU MAY WISH TO GIVE EXECUTED COPIES OF THIS LIVING WILL DECLARATION TO YOUR AGENT UNDER ANY DURABLE POWER OF ATTORNEY FOR HEALTH CARE YOU HAVE EXECUTED, TO YOUR LAWYER, YOUR PERSONAL PHYSICIAN AND MEMBERS OF YOUR FAMILY.

STATE OF OHIO
DURABLE POWER OF ATTORNEY
FOR HEALTH CARE

1. DESIGNATION OF ATTORNEY-IN-FACT

I, _____,

presently residing at_____, Ohio,

(the "Principal") being of sound mind and not under or subject to duress, fraud or undue influence, intending to create a Durable Power of Attorney for Health Care under Chapter 1337 of the Ohio Revised Code, as amended from time to time, do hereby designate and appoint:

_____ _____ presently residing
(Name) (Relationship)

at_____ Phone_____ as my

attorney-in-fact who shall act as my agent to make health care decisions for me as authorized in this document.

2. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make all health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so, at any time during which I do not have the capacity to make informed health care decisions for myself. Such agent shall have the authority to give, to withdraw or to refuse to give informed consent to any medical or nursing procedure, treatment, intervention or other measure used to maintain, diagnose or treat my physical or mental condition. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent by me or, if I have not made my desires known, that are, in the judgment of my agent, in my best interests.

3. ADDITIONAL AUTHORITIES OF AGENT. Where necessary or desirable to implement the health care decisions that my agent is authorized to make pursuant to this document, my agent has the power and authority to do any and all of the following:

(a) If I am in a terminal condition, to give, to withdraw or to refuse to give informed consent to life-sustaining treatment, including the provision of artificially or technologically supplied nutrition or hydration;

(b) If I am in a permanently unconscious state, to give, to withdraw or to refuse to give informed consent to life-sustaining treatment; provided, however, my agent is not authorized to refuse or direct the withdrawal of artificially or technologically supplied nutrition or hydration unless I have specifically authorized such refusal or withdrawal in Paragraph 4;

(c) To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, all of my medical and health care facility records;

(d) To execute on my behalf any releases or other documents that may be required in order to obtain this information;

(e) To consent to the further disclosure of this information if necessary;

(f) To select, employ, and discharge health care personnel, such as physicians, nurses, therapists and other medical professionals, including individuals and services providing home health care, as my agent shall determine to be appropriate;

THIS DURABLE POWER OF ATTORNEY FOR HEALTH CARE WILL NOT BE VALID UNLESS IT IS EITHER 1) SIGNED BY TWO ELIGIBLE WITNESSES AS DEFINED BELOW WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR 2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

I attest that the principal signed or acknowledged this Durable Power of Attorney for Health Care in my presence, that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence. I further attest that I am not the agent designated in this document, I am not the attending physician of the principal, I am not the administrator of a nursing home in which the principal is receiving care, and that I am an adult not related to the principal by blood, marriage or adoption.

Signature:_____ Residence Address:_____

Print Name:_____ _____

Date:_____ _____

Signature:_____ Residence Address:_____

Print Name:_____ _____

Date:_____ _____

OR

ACKNOWLEDGEMENT

State of Ohio County of _____ss:

On this the _____day of _____, 20_____, before me, the undersigned Notary Public, personally appeared_____, known to me or satisfactorily proven to be the person whose name is subscribed to the above Durable Power of Attorney for Health Care as the principal, and acknowledged that (s)he executed the same for the purposes expressed therein. I attest that the principal appears to be of sound mind and not under or subject to duress, fraud or undue influence.

My Commission Expires:_____ _____
Notary Public

NOTE: YOU MAY WISH TO GIVE EXECUTED COPIES OF THIS DURABLE POWER OF ATTORNEY FOR HEALTH CARE TO THE AGENT NAMED IN THIS DOCUMENT, EACH ALTERNATE AGENT, AND TO YOUR LAWYER, YOUR PERSONAL PHYSICIAN AND MEMBERS OF YOUR FAMILY.

(2) Refuse or withdraw informed consent to health care necessary to provide you with comfort care (except that, if he is not prohibited from doing so under (4) below, the attorney-in-fact could refuse or withdraw informed consent to the provision of nutrition or hydration to you as described under (4) below). (YOU SHOULD UNDERSTAND THAT COMFORT CARE IS DEFINED IN OHIO LAW TO MEAN ARTIFICIALLY OR TECHNOLOGICALLY ADMINISTERED SUSTENANCE (NUTRITION) OR FLUIDS (HYDRATION) WHEN ADMINISTERED TO DIMINISH YOUR PAIN OR DISCOMFORT, NOT TO POSTPONE YOUR DEATH, AND ANY OTHER MEDICAL OR NURSING PROCEDURE, TREATMENT, INTERVENTION, OR OTHER MEASURE THAT WOULD BE TAKEN TO DIMINSH YOUR PAIN OR DISCOMFORT, NOT TO POSTPONE YOUR DEATH. CONSEQUENTLY, IF YOUR ATTENDING PHYSICIAN WERE TO DETERMINE THAT A PREVIOUSLY DESCRIBED MEDICAL OR NURSING PROCEDURE, TREATMENT, INTERVENTION, OR OTHER MEASURE WILL NOT OR NO LONGER WILL SERVE TO PROVIDE COMFORT TO YOU OR ALLEVIATE YOUR PAIN, THEN, SUBJECT TO (4) BELOW, YOUR ATTORNEY-IN-FACT WOULD BE AUTHORIZED TO REFUSE OR WITHDRAW INFORMED CONSENT TO THE PROCEDURE, TREATMENT, INTERVENTION, OR OTHER MEASURE.);

(3) Refuse or withdraw informed consent to health care for you if you are pregnant and if the refusal or withdrawal would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to your life, or unless your attending physician and at least one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive);

(4) REFUSE OR WITHDRAW INFORMED CONSENT TO THE PROVISIONS OF ARTIFICALLY OR TECHNOLOGICALLY ADMINISTERED SUSTENANCE (NUTRITION) OR FLUIDS (HYDRATION) TO YOU, UNLESS:

(a) YOU ARE IN A TERMINAL CONDITION OR IN A PERMANENTLY UNCONSCIOUS STATE.

(b) YOUR ATTENDING PHYSICIAN AND AT LEAST ONE OTHER PHYSICIAN WHO HAS EXAMINED YOU DETERMINE, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND IN ACCORDANCE WITH REASONABLE MEDICAL STANDARDS, THAT NUTRITION OR HYDRATION WILL NOT OR NO LONGER WILL SERVE TO PROVIDE COMFORT TO YOU OR ALLEVIATE YOUR PAIN.

(c) IF, BUT ONLY IF, YOU ARE IN A PERMANENTLY UNCONSCIOUS STATE, YOU AUTHORIZE THE ATTORNEY-IN-FACT TO REFUSE OR WITHDRAW INFORMED CONSENT TO THE PROVISION OF NUTRITION OR HYDRATION TO YOU BY DOING BOTH OF THE FOLLOWING IN THIS DOCUMENT:

This document has no expiration date under Ohio law, but you may choose to specify a date upon which your Durable Power of Attorney for Health Care generally will expire. However, if you specify an expiration date and then lack the capacity to make informed health care decisions for yourself on that date, the document and the power it grants to your attorney-in-fact will continue in effect until you regain the capacity to make informed health care decisions for yourself.

You have the right to revoke the designation of the attorney-in-fact and the right to revoke this entire document at any time and in any manner. Any such revocation generally will be effective when you express your intention to make the revocation. However, if you made your attending physician aware of this document, any such revocation will be effective only when you communicate it to your attending physician, or when a witness to the revocation or other health care personnel to whom the revocation is communicated by such a witness communicates it to your attending physician.

If you execute this document and create a valid Durable Power of Attorney for Health Care with it, it will revoke any prior, valid Durable Power of Attorney for Health Care that you created, unless you indicate otherwise in this document.

This document is not valid as a Durable Power of Attorney for Health Care unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when you sign or acknowledge your signature. No person who is related to you by blood, marriage, or adoption may be a witness. The attorney-in-fact, your attending physician, and the administrator of any nursing home in which you are receiving care also are ineligible to be witnesses.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you.

Provided as a public service by the Ohio Hospice and Palliative Care Organization with the cooperation of the Ohio State Medical Association, the Ohio Hospital Association's Foundation for Healthy Communities and the Ohio State Bar Association, the organizations responsible for developing the forms.

DECLARATION FOR HEALTH CARE

I,_____, of _____, _____, Ohio _____ [Tel. (614)_____; Date of Birth: _____], being of sound mind, voluntarily and willfully make the Declaration contained herein. In the event that I am in a terminal condition or a permanently unconscious state, and when I am unable to give directions regarding the use of life-sustaining treatment, it is my intention that this Declaration shall be honored by my family and physicians as the final expression of my desire to receive all medical or surgical treatment that are available to prolong my life, pursuant to Ohio Revised Code 2133.02(A)(1). I am a competent adult who understands and accepts the consequences of my Declaration and the purpose and effect of this document.

For purposes of this Declaration:

(A) "LIFE SUSTAINING TREATMENT" MEANS ANY MEDICAL PROCEDURE, TREATMENT, INTERVENTION, OR OTHER MEASURE INCLUDING ARTIFICIALLY OR TECHNOLOGICALLY SUPPLIED NUTRITION AND HYDRATION THAT, WHEN ADMINISTERED, WILL SERVE PRINCIPALLY TO PROLONG THE PROCESS OF DYING.

(B) "TERMINAL CONDITION" MEANS AN IRREVERSIBLE, INCURABLE, AND UNTREATABLE CONDITION CAUSED BY DISEASE, ILLNESS, OR INJURY TO WHICH, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AS DETERMINED IN ACCORDANCE WITH REASONABLE MEDICAL STANDARDS BY MY ATTENDING PHYSICIAN AND ONE OTHER PHYSICIAN WHO HAS EXAMINED ME, BOTH OF THE FOLLOWING APPLY:

1. THERE CAN BE NO RECOVERY, AND

2. DEATH IS LIKELY TO OCCUR WITHIN A RELATIVELY SHORT TIME IF LIFE-SUSTAINING TREATMENT IS NOT ADMINISTERED.

(C) "PERMANENTLY UNCONSCIOUS STATE" MEANS A STATE OF PERMANENT UNCONSCIOUSNESS THAT, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AS DETERMINED IN ACCORDANCE WITH REASONABLE MEDICAL STANDARDS BY MY ATTENDING PHYSICIAN AND ONE OTHER PHYSICIAN WHO HAS EXAMINED ME, IS CHARACTERIZED BY BOTH OF THE FOLLOWING:

1. I AM IRREVERSIBLY UNAWARE OF MYSELF AND MY ENVIRONMENT, AND

2. THERE IS A TOTAL LOSS OF CEREBRAL CORTICAL FUNCTIONING, RESULTING IN MY HAVING NO CAPACITY TO EXPERIENCE PAIN OR SUFFERING.

I understand the purpose and effect of this document and sign my name to this Declaration
after careful deliberation on the _____ day of _____, 20___, at _____, Ohio.

_____ (signature)
Print name: _____

THIS DECLARATION WILL NOT BE VALID UNLESS IT IS EITHER (1) SIGNED BY
TWO ELIGIBLE WITNESSES AS DEFINED BELOW WHO ARE PRESENT WHEN
YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR (2) ACKNOWLEDGED
BEFORE A NOTARY PUBLIC.

I attest that the Declarant signed or acknowledged this Declaration in my presence, and that
The Declarant appears to be of sound mind and not under or subject to duress, fraud or
Undue influence. I further attest that I am not the attending physician of the Declarant, I
am not the administrator of a nursing home in which the Declarant is receiving care, and
that I am an adult not related to the Declarant by blood, marriage or adoption.

_____ Address:_____
Signature

_____

_____
Print Name

_____
Date

_____
Signature

_____
Print Name

_____
Date

Address: _____

_____

_____

_____

Declaration for Health Care
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OR

ACKNOWLEDGEMENT

STATE OF OHIO

SS:

COUNTY OF _____

BE IT REMEMBERED, that on this the _____ day of _____, 20___, before me the subscriber, a Notary Public in and for said state and county, personally came the above signed _____, Declarant, who signed the foregoing instrument to be his or her respective voluntary act and deed for the purposes stated therein. I attest that Declarant appears to be of sound mind and not under or subject to duress, fraud or undue influence.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC

NOTE: YOU MAY WISH TO GIVE EXECUTED COPIES OF THIS DECLARATION FOR HEALTH CARE TO YOUR AGENT UNDER ANY DURABLE POWER OF ATTORNEY FOR HEALTH CARE YOU MAY HAVE EXECUTED, TO YOUR LAWYER, YOUR PERSONAL PHYSICIAN AND MEMBERS OF YOUR FAMILY.

NOTICE TO DECLARANT

This Declaration is designed to serve as evidence of an individual's desire that life-sustaining medical treatment, including artificially or technologically supplied nutrition and hydration, **be provided** and **NOT** withheld or withdrawn if the individual is unable to make informed treatment decisions and is in a terminal condition or is in a permanently unconscious state.

LAST WILL AND TESTAMENT
OF
[NAME]

I, [name], presently of [city], Ohio being of full age, and of sound and disposing mind and memory, and under no restraint, do hereby make, and publish and declare this to be my Last Will and Testament, and do hereby revoke and render null and void any and all other Last Wills, Testaments, and Codicils thereto by me heretofore made.

ITEM I

Any and all estate, inheritance and succession taxes, including interest and penalties thereon, if any, whether state or federal, which may become payable by reason of my death, whether levied or assessed in respect of my estate subject to the provisions of this Will or otherwise, shall be paid by my Executor without any right or duty to seek or obtain contribution or reimbursement from any person or property on account of any payment made therefore. I further direct that all my enforceable debts and funeral expenses be paid by my fiduciary out of my estate as soon as practical after my decease.

ITEM II

I give, devise and bequeath my entire estate, whether real, personal or mixed, of every kind, nature and description whatsoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my demise, by power of appointment or otherwise, to each of my beloved children _____, _____ and _____ twenty-five per cent (25%) of my estate and to each of the beloved children of my deceased son _____, my grandchildren _____ and _____, twelve and one-half per cent (12.5%) of my estate, absolutely and in fee simple.

ITEM III

Should, however, any of mysaid above named beloved children and/or grandchildren predecease or fail to survive me by thirty (30) days or we should perish in a common accident leaving issue surviving me, such issue shall take their parent's share in equal parts per stirpes. If any of my children do not leave issue surviving me their devise and bequeath shall lapse and increase proportionately the devise and bequest to my surviving child, children and/or grandchildren.

Initials:_____ Date:_____

ITEM IV

If all my beloved children born or adopted of me (as set forth in ITEM III) and all my grandchildren predecease me or fail to survive me by thirty (30) days or we should all perish in a common accident my entire estate, shall pass to those persons who should be entitled to my property if I were to die intestate, all as governed by the statutes of the State of Ohio.

ITEM V

The receipt of the parent or guardian or other person maintaining any minor beneficiary under the terms of this Will shall be a complete acquittance of my Executor with respect to any property so delivered.

ITEM VI

I nominate and appoint my [relationship], _____, as Executor of this, my Last Will and Testament, hereby granting to him/her, as such Executor, full power and authority to sell and convey all or part of my estate, real, personal, or mixed, upon such terms and at such prices as he/she may deem proper, and without obtaining any order of court thereof.

The term "Executor" or "Executrix", as used herein, shall be deemed to include any person, individual or corporation, duly appointed and acting in such capacity.

I also grant to him full power and authority in the settlement of my estate to compromise, compound, adjust and settle any and all debts, liabilities, and claims, whether same be in litigation or not, either due to or from my estate, for such sums and upon such terms and conditions and in such manner as my Executor shall deem best.

I further grant upon my Executor full power and authority to conduct and carry on, for such length of time as he/she in his/her sole discretion deem advantageous to my estate, any and all business or businesses conducted by me at the time of my death, and to do all things necessary or proper in the usual course of said business or businesses until such time as the same can be sold, as a going business or otherwise, for a price which, in the sole opinion of my Executor, is a reasonable value thereof, and shall in so doing be exonerated from any loss which might result thereby.

I further authorize my Executor to perform such other acts and to do such other things as my Executor shall deem necessary or desirable for the proper administration of my estate, and to execute and deliver such instruments as may be required in the discharge of his/her duties, the generality of this provision not being limited by any specific powers herein granted to my Executor.

In any case in which my Executor is required physically to divide property held by him into parts or to distribute it, my Executor may, in his/her discretion, make such division or distribution in kind or in money, or partly in money, and to that end may allot specific property, real or personal, or an undivided interest or interests therein, to such part or parts.

In the absence of abuse of discretion, the judgment of my Executor respecting the values of assets for the purpose of division and the distribution shall be binding upon all parties interested in my estate.

I direct that no appraisement of my household goods and furniture be made.

I require that no bond be given to my Executor.

My Executor may exercise, in such manner and to such extent as he may deem advisable, any elections or choices available under the federal tax laws, and may execute any and all tax returns, even though such action may be advantageous to one or more of the beneficiaries hereunder and disadvantageous to other beneficiaries. My Executor shall have no duty to make any adjustments in the account for the benefit of any beneficiary adversely affected by such election.

In the event my beloved [relationship], _____, presently of [city], Ohio shall for any reason fail to qualify as Executor hereunder or, having qualified, either fails to complete the administration of my estate or shall cease to act as Executor before administration of my estate shall have been completed, I then nominate and appoint in his/her stead my [relationship], _____, presently of [city], Ohio as Successor Executor of this, my Last Will and Testament, giving unto him/her all the rights and powers set forth in this ITEM and conferred upon _____, as Executor, and I require that no bond be given him/her as Successor Executor hereunder. I confer upon, [name], the power under Section 2107.65 of the Ohio Revised Code to nominate in writing, a Successor Executor to himself/herself who too shall serve without bond.

Initials:_____ Date:_____

ITEM VII

If any gift, bequest, devise or legacy made by this, my Last Will and Testament, would, but for this Item, be made to any person who, at the time is less than eighteen (18) years of age, then in that event the gift, bequest, devise or legacy shall be made to _____, presently of [city], Ohio as Trustee in trust, for the benefit of said person.

In the event that _____ refuses or otherwise fails to serve, I hereby grant the same rights, powers and privileges and impose the same duties upon, and make said gift, bequest, devise or legacy to _____ presently of [city], Ohio as Trustee in trust, instead, for the benefit of said person.

I require that no bond be given to my Trustee of Successor Trustee hereunder.

The purpose of said Trust is to ensure an adequate level of income, support, maintenance and education for said beneficiary. It is my express intention and direction that the income or principal of said Trust shall not supplant or replace the legal obligation of support, maintenance or education which any other person might have with respect to said beneficiary, but rather shall only supplement other, existing sources of income. To meet this purpose, I empower the Trustee to distribute, or not to distribute, all or part of the income and to invade all or part of the principal as the Trustee in his/her sole discretion decides.

The Trustee shall have the power to manage, invest and reinvest the assets of the Trust estate, to collect the income there from and to apply so much or all of the net income and principal thereof as set forth above. Any net income not so applied shall be added to the corpus of the Trust and held, administered and disposed of as a part thereof.

If such beneficiary shall die before reaching the age of eighteen (18), upon his/her death, the remainder of the corpus of the Trust shall be paid over to his/her issue per stirpes, if no issue, then to the surviving beneficiaries hereunder, share and share alike.

ITEM VIII

Regardless of anything in this instrument to the contrary, no Trust shall continue more than 21 years after the death of the survivor of myself, my spouse and each lineal descendant of mine living at the time of my death. Immediately prior to the expiration of such period, each Trust then in existence shall terminate, and the then existing principal of each such Trust, including any undistributed or accrued income thereof, shall vest in and be distributed to its then current income beneficiary.

To the extent permitted by law, the principal and income of any Trust shall not be liable for the debts of any beneficiary or subject to alienation or anticipation by a beneficiary, except as may be otherwise provided herein.

If, at any time, the size of the Trust under my Will is so small that, in the opinion of the Trustee, the Trust is uneconomical to administer, my Trustee may terminate the Trust and distribute the assets to the person then authorized to receive trust income, or if more than one person is authorized to receive trust income, to the one or ones of them my Trustee may deem appropriate and in such shares as such Trustee may deem appropriate.

ITEM IX

Should any of the provisions of this, my Last Will and Testament be held ineffective or invalid by any court for any reason, it is my will and I so direct that no other provision or provisions of this, my Last Will and Testament, shall be invalidated, impaired or affected thereby, but that this, my Last Will and Testament, shall be construed as if such invalid or ineffectual provision had not been herein contained.

IN WITNESS WHEREOF, I have hereunto signed my name and acknowledged and published this instrument, consisting of this and five (5) other typewritten pages identified by my signature, as my Last Will and Testament, in the presence of the undersigned witnesses, on this ____ day of _____, 2001

Signature:_____
[NAME]

Witnesses: _____

_____

We hereby certify that [name], the Testatrix named in the foregoing instrument of writing, subscribed his/her name thereto on this day, in our presence, and to us declared the same to be his/her Last Will and Testament; that we subscribe our names hereto as witnesses, in the presence and at the request of said Testatrix, and in the presence of each other, and that the time of the execution of said instrument as aforesaid and of our subscribing the same as witnesses, the said Testatrix was of sound and disposing mind, to the best of our knowledge, information and belief.

WITNESS our hands, in the City of [city], County of [county], and State of Ohio, this ____ day of _____, 2001.

_____residing at _____

_____residing at _____

Initials:_____ Date:_____

LAST WILL AND TESTAMENT
OF

I, _____, presently of _____, Ohio, being of full age, and of sound and disposing mind and memory, and under no restraint, do hereby make, publish and declare this to be my Last Will and Testament, and do hereby revoke and render null and void any and all other Last Wills, Testaments, and Codicils previously made by me.

ITEM I

I order and direct that all my just debts, funeral expenses and death taxes, both State and Federal, if any, be paid out of my estate as soon after my death as shall be convenient. I direct that certain items of my estate be sold to pay any debts or expenses, if necessary. These items include: _____Ifthese items do not cover such expenses and debts, then other items are to be sold from my estate to pay any such debts or expenses, before any gifts are devised as specified in ITEM III.

ITEM II

I give, devise and bequeath the rest and residue of my entire estate, whether real, personal or mixed, of every kind, nature and description whatsoever and wheresoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my death, by power of appointment or otherwise, to my husband, _____.

ITEM III

If my husband,_____., predeceases me or fails to survive me by thirty (30) days, I give, devise and bequeath the rest and residue of my estate in accordance with the terms set forth in this, my Last Will and Testament. I give, devise and bequeath the following described items of property to my children as specified below:

Son, _____	Grandfather Clock, Cedar Wardrobe, Cedar Chest, Knife Collection (hunting knives, personal knives, fancy knives, swords – other than ordinary kitchen ware)
Daughter,_____	Doll Collection
Daughter, _____	Jewelry Box Collection

Son, _____	Clown Collection, circular saw & electric hand drill
Son, _____	Gun Collection, Gun Cabinet, Dinette Set, Old Buffett, Entertainment Center and Television Set

All of the above named children are to share equally and share alike all family photographs and pictures, to be distributed among each and all by the Executor of my Last Will & Testament.

Should, however, any of the above named children predecease or fail to survive me by thirty (30) days, then the specific gift given to him or her shall lapse and shall be distributed equally among the remaining named children.

ITEM IV

If my husband,_____., predeceases me or fails to survive me, and after the specific bequests stated in ITEM III above have been made, then I give, devise and bequeath the rest and residue of my estate whether real, personal or mixed, of every kind, nature and description whatsoever and wheresoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my demise, by power of appointment or otherwise, to my son _____who currently resides at_____, Ohio.

Should, however, my son, _____, predecease or fail to survive me by thirty (30) days, then the rest and residue of my estate shall be distributed equally among the remaining children as named in ITEM III. Should, however, any those named children predecease or fail to survive me by thirty (30) days, then his or her share of the rest and residue shall lapse and shall be distributed equally among the remaining named children.

ITEM V

If all the children named in ITEM III shall predecease me or fail to survive me or we should all perish in a common accident, my entire estate shall pass to those persons who should be entitled to my property if I were to die intestate, all as governed by the statutes of the State of Ohio.

ITEM VI

I appoint my son, _____and my daughter, _____, as Co-Executors of this, my Last Will and Testament, to serve without bond. If either my son, _____, or my daughter, _____, is unable or unwilling to serve, then the other shall serve as sole Executor, with like power and authority, and without bond.

I grant my Executor full power and authority to sell and convey all or part of my estate, real, personal, or mixed, upon such terms and at such prices as they may deem proper, and without obtaining any order of court thereof, as is necessary for the proper administration of my estate, and to take any and all other appropriate actions to carry out my wishes as expressed in, and in accordance with, this my Last Will and Testament.

ITEM VII

I have intentionally made no provision in this my Last Will and Testament for the following: _____ ; and any of my other relatives.

ITEM VIII

Should any of the provisions of this, my Last Will and Testament be held ineffective or invalid by any court for any reason, it is my will and I so direct that no other provision or provisions of this, my Last Will and Testament, shall be invalidated, impaired or affected thereby, but that this, my Last Will and Testament, shall be construed as if such invalid or ineffectual provision had not been herein contained.

IN WITNESS WHEREOF, I have hereunto signed my name and acknowledged and published this instrument, consisting of this and four (4) other typewritten pages identified by my signature, as my Last Will and Testament, in the presence of the undersigned witnesses, on this ____ day of _____, 2001

Signature:_____
[Print Name]

We hereby certify that_____, the Testatrix named in the foregoing instrument of writing, subscribed her name thereto on this day, in our presence, and to us declared the same to be her Last Will and Testament; that we subscribe our names hereto as witnesses, in the presence and at the request of said Testatrix, and in the presence of each other, and that at the time of the execution of said instrument as aforesaid and of our subscribing the same as witnesses, the said Testatrix was of sound and disposing mind, to the best of our knowledge, information and belief.

WITNESS our hands, in the City of_____, County of _____, and State of Ohio, this _____ day of _____ _____, 200__.

_____

Signature

_____

Print name Address

_____

Signature

_____

Print Name Address

Initials:_____ Date:_____

DURABLE
POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS that I, _____, of _____, OH being of full age, sound mind and memory and of my own free will and accord do hereby make, constitute and appoint _____, presently residing at _____, _____, OH, my true and lawful ATTORNEY, for me and in my name, place and stead, to do any and all of the following:

1. To exercise, do, or perform any act, right, power, duty or obligation whatsoever that I may now have or may hereafter acquire the legal right, power or capacity to exercise, do, or perform in connection with, arising out of, or relating to any person, item, thing, transaction, property, real or personal, tangible or intangible, of any nature whatsoever belonging to me or in which I may now or may hereafter have any interest.

2. To ask, demand, institute legal proceedings for, recover, collect, receive, and hold and possess all such sum and sums of money, debts, claims, rents, bonds, notes, checks, drafts, accounts, deposits, legacies, bequests, devises, interests, dividends, stock certificates, certificates of deposit, annuities, pension and retirement benefits, insurance benefits and proceeds, documents of title, choses in action, personal and real property, intangible and tangible property and property rights, and demands whatsoever, liquidated or unliquidated, as are now, or shall hereafter become due, owing, payable, owned or belonging to or by me in which I have or may acquire an interest, and to have, use, and take all lawful ways and means and legal and equitable remedies, procedures, writs in my name for the collection and recovery thereof, and to compromise, settle, and agree for the same, and to make, execute, and deliver for me and in my name all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

3. To do business with banks and savings and loan associations and particularly to:

a) carry checking and savings accounts for me and in my name in such banks and savings and loan associations as my said ATTORNEY may deem best and to make deposits of money belonging to me in such accounts and disburse said monies;

b) sign in my name checks on all accounts standing in my name, and to deposit to and withdraw from said accounts;

c) endorse all checks and drafts made payable to my order and collect the proceeds;

d) have access to and power of depositing in and removing from any safety deposit box standing in my name; and

e) open, maintain and secure the proceeds, either principal or interest, of any account or deposit including, but not limited to, money market accounts or certificates of deposit in my name solely or jointly with others.

4. To execute, sign, endorse, acknowledge and renew and deliver deeds, leases, assignments, transfers, covenants, agreements, contracts, hypothecations, mortgages, deeds of trust, reconveyances, releases and satisfactions of mortgages, judgments, and other debts, escrow instructions, notices, receipts, commercial paper, investment securities, bills of lading, warehouse receipts, promissory notes, bonds, bills of exchange, trade acceptances, and other documents of title, security agreements and evidences of debt, and such other instruments in writing of whatever kind and nature as my said ATTORNEY may deem necessary and proper.

5. To exercise general supervision and control over any and all stocks, bonds, or other securities and other personal property of any nature whatsoever belonging to me, and particularly to:

a) sell, assign and transfer stocks, bonds and securities standing in my name or belonging to me;

b) buy stocks, bonds and securities of all kinds in my name and for my account and at such prices as my said ATTORNEY shall determine;

c) sign, execute, acknowledge and deliver in my name all transfers and assignments of stocks, bonds and securities;

d) borrow money and to pledge securities for such loans as my said ATTORNEY may deem necessary;

e) consent in my name to reorganizations and mergers; and

f) collect and receive any dividends, interest, profits or other accruals of income due or to become due upon any such stocks, bonds, securities or other evidence of title or property and to execute proper receipt, release and discharge therefor.

6. To insure or cause insurance to be taken on buildings, structures, goods, merchandise, and other commodities, or any part thereof, at such premiums and for such risk as my said ATTORNEY may deem proper.

7. To operate, manage, control, lease, transfer, sell, exchange, assign, convey, and encumber any and all real estate owned by me, to make such disbursements of monies belonging to me in such manner, at such times and for such purposes as my said ATTORNEY may in his or her sole, unrestricted discretion and judgment deem best for maintenance, upkeep, repair or any other purposes in connection with any real estate owned by me, and to execute, acknowledge and deliver deeds of real property, mortgages, releases, satisfactions and other instruments relating to realty which my said ATTORNEY may deem necessary.

8. To employ and discharge such accountants and other agents, and for such remunerations as my said ATTORNEY may deem best.

9. To retain counsel and attorneys on my behalf, to appear for me in all actions and proceedings to which I may be a party in any court of law, to commence actions and proceedings in my name, if necessary, to sign and verify in my name all complaints, petitions, answers and other pleadings of every description.

10. To disclaim on my behalf any or all interest I may have in any gift made to me or for my benefit or any property to which I would otherwise be entitled upon the death of another person.

11. In the event of accident or illness, to take all steps necessary to admit me to any hospital, clinic, nursing facility or any similar health care institution, including advising the administrative and/or medical personnel of such facility as to my physical condition, medical history, financial resources, and personal data, signing admission papers and arranging for payment of charges.

12. The undersigned does give and grant to my said ATTORNEY full power and authority to do and perform all and every act and thing requisite or proper to be done in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation and with full authority to deal with such property as authorized above, hereby ratifying and confirming all that my said ATTORNEY or his or her substitute or substitutes, shall lawfully do or cause to be done by virtue of the authority granted herein.

13. This POWER OF ATTORNEY shall not be affected by my disability or lapse of time.

14. This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, acts, rights, or powers herein does not limit or restrict, and is not to be construed or interpreted as limiting or restricting the general powers herein granted to my said ATTORNEY.

15. Should any provision or part of this POWER OF ATTORNEY be held unenforceable or invalid for any reason the remaining provisions and portions of this POWER OF ATTORNEY shall be unaffected by such holding.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2000.

WITNESSED BY:

_____ _____

Principal

_____

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named _____ who acknowledged that _____ did sign the foregoing instrument and that the same is _____ free act and deed.

_____

NOTARY PUBLIC

REVOCATION OF POWER OF ATTORNEY

Know all men by these presents, that whereas, in and by my Power of Attorney dated _____, and recorded in the Office of the Recorder of Franklin County, Ohio, in Power of Attorney Book volume _____, page _____ of the records of Franklin County, I, _____, _____, Columbus, Ohio, did make, constitute and appoint _____ of _____, Columbus, Ohio, my true and lawful attorney, for me, and in my name, place and stead, to grant, bargain, sell, convey, or lease, or contract for the sale, conveyance, or lease, of the following described property owned by me:

Situated in the County of Franklin, in the State of Ohio, in the City/Township of _____,

and bounded and described as follows:

The said attorney in fact is hereby empowered and authorized to grant, bargain, sell, convey, or lease, or to contract for the sale, conveyance, or lease of any or all of the above described lands to any person for such price or prices, and on such terms, as the attorney in fact may deem proper, and in my name to make, execute, acknowledge, and delivery a good and sufficient deed or deeds of conveyance, lease, or other

instrument necessary to effect such sale, conveyance, lease or agreement.

I further grant to my attorney in fact full power and authority to perform all acts necessary to be done in and about the premises, as amply and fully to all intents and purposes as I could do if personally present.

I hereby authorize the attorney in fact to ask for, demand, sue for, collect, recover, and receive all moneys which may become due and owing to me by reason of such conveyance, whether by deed, lease, contract, or other instrument.

I further authorize and empower the attorney in fact, to my name or otherwise, to ask for, demand, sue for, collect, and recover any and all sums that may be due to me on account of any damage that may have arisen by reason of trespass or other injuries to any of the lands belonging to me situated as above mentioned or as herein described, and I hereby give to the attorney in fact full power and authority to sue and prosecute in my name or otherwise in any court, as in the manner of him deemed most advisable, the party or parties for such trespass or injury to said above mentioned or described lands, with authority to pursue the same to judgment, and when necessary to collect the sums recovered by execution, or in any other mode or manner that the attorney in fact may consider advisable.

I further give to the attorney in fact full power and authority to appoint a substitute to perform any of the acts that he is by this instrument authorized to perform, with the right to revoke such appointment of substitute at pleasure; and I hereby give and grant to the attorney in fact or his substitute full power and authority to do and perform everything proper and necessary to carry out and execute said power as I would do if personally present and acting in the premises.

Now therefore, I, _____, do hereby revoke, countermand, annul and make void the power of attorney above mentioned, and all power and authority thereby given, or intended to be given to _____.

In Witness Whereof, I have hereunto set my hand at Columbus, Ohio, this _____ day of _____, 2000.

WITNESS:

_____ _____

Name

_____

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

Before me, a Notary Public, in and for said county, personally appeared the above named _____, who acknowledges that ***he/she*** did sign the foregoing instrument

and that the same is his/her voluntary act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this _____ day of _____, 2000.

_____

Notary Public

REVOCATION OF POWER OF ATTORNEY

Know all men by these presents, that whereas, in and by my Power of Attorney dated _____ and recorded in the office of the recorder of Franklin County, Ohio, in power of attorney book volume ____, page ____, of the records of Franklin County, I, _____, did make, constitute and appoint _____, my true and lawful attorney, for me, and in my name, place and stead, with authority to cash all my checks, pay all bills and take care of _____ and _____ account, which is to be put into ***his/her*** name at _____, as will more fully appear by reference to said power of attorney.

Now therefore, I, _____, do hereby revoke, countermand, annul and make void the said power of attorney above mentioned, and all power and authority thereby given, or intended to be given to _____.

IN WITNESS WHEREOF, we have hereunto set our hands at Columbus, Ohio, this _____ day of _____, 2000.

_____
name

WITNESS:

_____

_____

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

Before me, a Notary Public, in and for said county, personally appeared the above named _____, who acknowledged that ***he/she*** did sign the foregoing instrument and that the same is ***his/her*** voluntary ant and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this _____ day of _____, 2000.

_____
Notary Public

REVOCATION OF POWER OF ATTORNEY

Know all men by these presents, that whereas, in and by my Power of Attorney dated on or about _____, I, _____, did make, constitute and appoint _____ to be my true and lawful attorney, for me, and in my name, place and stead.

Now therefore, I, _____, do hereby revoke, countermand, annul and make void my power of attorney, and all power and authority thereby given, or intended to be given to _____.

IN WITNESS WHEREOF, we have hereunto set our hands at Columbus, Ohio, this _____ day of _____, 2000.

_____
Name

WITNESS:

_____

_____

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

Before me, a Notary Public, in and for said county, personally appeared the above named _____, who acknowledged that ***he/she*** did sign the foregoing instrument and that the same is ***his/her*** voluntary act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this _____ day of _____, 2000.

_____
Notary Public

WILL CLAUSES

Exordium

1. I, _____, a resident of the County of Franklin, State of Ohio, being of full age and of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all wills or Codicils heretofore made by me.

2. I, _____, of the City of Columbus, Franklin County, Ohio, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills by me heretofore made.

Payment of Debts, Costs of Administration

3. ITEM ____. I direct that my Executor pay all of my legally enforceable debts out of my Estate as soon as practicable.

4. ITEM ____. I direct my Executor to pay all funeral expenses, costs of delivering bequests, estate, inheritance and other death taxes payable by reason of my death including, but not limited to, those taxes payable because of joint property passing to the survivors or because of the payment of proceeds of policies of insurance on my life, from the residue of my estate, without apportionment or exacting reimbursement from any person for said taxes.

5. ITEM ____. I direct the payment of all of my legally enforceable debts, funeral expenses and estate taxes out of the residue of my estate as soon as practicable after the time of my decease.

(Tax Apportionment)

6. ITEM _____. I direct that all estate, succession, legacy, inheritance or other transfer taxes, however designated, that shall be payable by reason of my death, whether assessed with respect to property passing under this Will or otherwise, shall be paid out of and be charged against the principal of my residuary estate, without reimbursement from any person.

Specific Bequest

7. ITEM ____. I give and bequeath my to my _____ to my _____.

8. ITEM ____. I specifically bequeath all of my tangible personal property located in and around my residence to my _____, _____.

Devise of Real Estate

9. ITEM ____. I give and devise to _____, my real estate, together with all improvements thereon (if I shall own such property at the time of my death) located at _____, Columbus, Franklin County, Ohio. (Include property description or parcel number if possible).

General Bequest / Devise

10. ITEM ____. I give, devise and bequeath to my _____, _____, all of my property both real and personal which I possess at the time of my death, or to which I may be otherwise entitled, and wheresoever situated, absolutely and in fee simple.

Residuary Clauses – Bequest / Devise

11. ITEM ____. All the rest, residue and remainder of my property, both real and personal, I give devise and bequeath to my _____, _____.

(With 30-Day Survival alternate)

12. ITEM ____. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, which I possess at the time of my death, or to which I may be otherwise entitled, and wheresoever situated to my, _____, _____, to be h___ absolutely and in fee simple. In the event that the said _____ predeceases me or fails to survive me by thirty (30) days then I give, devise and bequeath all of my estate, both real and personal, which I possess at the time of my death, or to which I may be otherwise entitled, and where so ever situated to my _____, _____, in equal shares.

(Residuary Bequest / Devise to Trust Co.)

13. ITEM ___. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of every kind and description, wheresoever situated that A- may o%-n or have the power to dispose of at the time of my death, to BANK ONE TRUST COMPANY, N.A., Columbus, Ohio, its successors and assigns, Trustee under Agreement with me dated the day of _____, 20 __, to be added to and become a part of the trust created thereby in augmentation of the assets thereof and to be administered by the Trustee under said agreement and disposed of as provided in said agreement. This is a devise and bequest to the Trustee of a trust previously established by me and the receipt of said Trustee shall be full release and acceptance to

the Executor of my estate for all property so distributed, and neither said Executor nor the court having jurisdiction of the administration of my estate shall have any duty or obligation to see to the application of the Trustee of the property so distributed.

If, for any reason, said Living Trust shall not be in existence at the time of my death, or, if for any reason, a court of competent jurisdiction shall validly and ultimately declare this bequest and devise to be ineffective and invalid, then, I give, devise and bequeath all of said property passing under this Item of my Will to BANK ONE TRUST COMPANY, N.A., Columbus, Ohio, to be administered and distributed in exactly the manner described in said Living Trust. Agreement above referred to; in such case and under such circumstances I do hereby incorporate said agreement by reference into this Will to be administered as a Testamentary Trust.

30 -Day Survival "Common Disaster

(To Children, per capita)

14. ITEM ____. Should my _____, _____, predecease me, or should my _____ and I meet death at or about the same time, or as a result of the same cause, then and in that event, I give, devise and bequeath all of the property which I possess upon my death, or to which I may be entitled, real, personal and mixed, and of every kind whatsoever and wheresoever situated, to my _____ per capita, share and share alike.

(To Children, per stirpes)

15. ITEM ____. In the event that my said _____, _____, predeceases me or fails to survive me by thirty (30) days, all of my estate and property, both real and personal, which I possess or to which I may be entitled at the time of my

death, I give, devise and bequeath to my child(ren), including those born to us or adopted by us hereafter, in equal shares. If any of my children predecease me leaving lawful issue surviving my death, the share which such deceased child would have received by surviving me shall be distributed to the issue of such deceased child, per stirpes. However, if any of my children predecease me leaving no lawful issue surviving my death, the share which such deceased child would have received by surviving me shall be distributed proportionately among or between my other children or their issue as provided heretofore in this Item ____.

(To Trust)

16. ITEM ____. In the event that my said _____, _____, predeceases me or fails to survive me by thirty (30) days, then in that event, I give, devise and bequeath all of my property which I possess upon my death or to which I may be entitled, real, personal and mixed and of every kind whatsoever and wheresoever situated to _____ as Trustee, to be held and disposed of under the Trust provided in the Trust Agreement entered into between me and _____under date of _____, ___, 20_, prior to my signing this Will and as amended at any time prior to subsequent execution of this Will. My intention is simply to identify said Trust Agreement and not to incorporate it by reference into this Will or to create a testamentary trust hereby. However, if for any reason said living trust shall not be in existence at the time of my death, or, if for any reason a court or courts of competent jurisdiction shall validly and definitively declare this bequest and devise to be ineffective and invalid, then I give, devise and bequeath all of the said property passing under this paragraph of my Will to _____ or its successor, as Trustee, to serve without bond, to

be held, managed and distributed in exactly the same manner described in said living trust agreement hereinbefore referred to which, under said circumstances, I do hereby incorporate by reference into this Will to be administered as a testamentary trust.

(To Named Individuals)

17. ITEM ____. In the event that-my _____, _____, predeceases me, then and in that event, I give, devise and bequeath all of my property which I possess upon my death or to which I may be entitled, real, personal and mixed, and of every kind whatsoever and wheresoever situated as follows:

(a)_____

(b)_____

(c)_____

(d)_____ of my net estate to _____ Catholic/Methodist/Presbyterian/Lutheran Church, _____ Ohio, to be used for masses for the repose of my soul.

(To Trust for Minors)

18. ITEM ____. In the event that my said _____ , predeceases me or fails to survive me by thirty (30) days, all of my Estate and property, both real and personal, which I possess or to which I may be entitled at the time of my death, I give,, devise and bequeath to as Trustee for the benefit of my child(ren), including those born to us or adopted by us hereafter.

(a) I direct that the Trustee pay and apply as much of the net income and principal of this trust as he in h_ absolute discretion feels is necessary for the health and education of my children. I direct that all accumulated and undistributed net income of the trust be added to and become a part of the principal or corpus of the trust.

(b) The term "education as used in Item ____ above, means both college and post-graduate studies at an accredited institution of higher learning selected by the respective beneficiary. Distribution by the Trustee from the trust for the purpose of providing an education to my children shall also include reasonable living and travel expenses for the respective beneficiaries.

(c) The trust corpus shall be maintained as one unit for investment purposes, but shall be divided for accounting purposes into one equal share for each of my children. I further direct that upon each child attaining the age of _____(__) years, the Trustee shall distribute _____ (__) of that child's share of the trust corpus to the child to be his absolutely.

(d) Upon each child attaining the age of _____ (__) years, the Trustee shall distribute _____ (__) of the balance remaining in that child's share of the total corpus to the child to be his absolutely.

(e) Upon each child attaining the age of _____(__) years, the entire balance of that child's share in the total trust corpus shall be distributed to him to be his absolutely.

(f) My Trustee shall have the powers and authority given to testamentary Trustees under the laws of the State of Ohio.

If any of my children predecease me leaving lawful issue surviving my death, the share which such deceased child would have received by surviving me shall be distributed to the issue of such deceased child per stirpes. However, if any of my children predecease me leaving no lawful issue surviving my death, the share which such deceased child would have received by surviving me shall be distributed proportionately among or between my other children or their issue as provided heretofore in this Item ____.

Guardian of Minor Children

(Person and Estate)

19. ITEM ____. If my _____, _____, does not survive me, or if we should suffer simultaneous death in a common accident, I hereby appoint my _____, _____ as Guardian of the person and estate of any of my child(ren) surviving me and who are minors at the time of my death. I request that the said _____ shall not be required to furnish any bond or other security for the faithful performances of h_ duties as guardian of the person and estate, provided that the laws of the State of Ohio allow persons to serve without bond.

(Estate only)

20. ITEM ____. If the conditions of Item ____ should occur and the appointment of a Guardian of the estate becomes necessary, I hereby appoint my _____, _____, as Guardian of the estate(s) of my surviving minor child(ren). I request that he too be allowed to serve without bond for the faithful performance of h__ duties as Guardian of the estate(s) of my child(ren).

(Person only)

21. ITEM ____. If the conditions of Item ____ should occur and the appointment of a Guardian of the person becomes necessary, I hereby appoint my _____, _____, as Guardian of the person of my surviving minor child(ren). I request that he too be allowed to serve without bond for the faithful performance of h__ duties as Guardian of the person of my child(ren).

Gifts to Guardian / Custodian

22. ITEM ____. If _____shall not survive me, or we both are killed as a result of a common accident and she does not survive me for thirty (30) days, I then give, devise and bequeath all the rest, residue and remainder of my property, real and personal, wheresoever situate, which I may own or have the right to dispose of at the time of my decease, to my daughter/son, _____.

(Language Re: Gifts to Minors Act)

If my daughter/son _____ is a minor at the time of my death, my Executor may distribute such child's share to the guardian / custodian of such child or to any person with whom such child resides for the use of the child, and the distributee's receipt shall be a complete discharge of my Executor with regard to such distribution.

Appointment of Executor

23. ITEM ____. I hereby nominate and appoint my as Executor of this my Last Will and Testament. In the event of h- death, refusal or inability to act, I hereby nominate and appoint my _____, _____, as Substitute Executor with all the rights and duties herein given to or imposed upon my Executor. I direct that each shall serve WITHOUT BOND, the same being specifically waived hereby.

24. ITEM ____. I make, nominate and appoint my _____ to be the Executor of this my Last Will and Testament, and as Substitute Executor, I appoint my _____, and direct that each shall serve WITHOUT BOND.

(Power of Appointment)

25. ITEM ____. I confer upon, PATRICK M. DOUGHERTY the power under Section 2107.65 of the Ohio Revised Code to nominate in writing, a Successor Executor to himself who too shall serve WITHOUT BOND, with all the rights and duties herein given to or imposed upon my Executor.

Powers of Executor

26. ITEM ____. I hereby give my said Executor and Substitute Executor, respectively, full power and authority to sell at public or private sale, for cash or credit, and to mortgage, lease and convey any part of my estate, both real and personal, at such time and upon such terms and conditions as either may deem best, all without court order.

27. ITEM ____. I direct that my Executor shall have full discretionary power and authority, without order or approval of the Court, to take whatever actions -he deems desirable in the administration of my estate, including the following rights, powers, and authority, which are shown by way of illustration but not by way of limitation:

(a) To retain any of my real or personal property, without liability for any loss or depreciation by reason of such retention;

(b) To sell or lease any of my real or personal property for such prices, and upon such terms as my Executor deems advisable;

(c) To vote all stocks by proxy or in person;

(d) To invest or reinvest any money in such investments as my Executor deems advisable without being limited by any statute of the State of Ohio regarding investments by fiduciaries now or hereafter in effect;

(e) To borrow money and to mortgage or pledge any property of my estate therefor;

(f) To employ such attorneys, agents, and consultants as my Executor may deem necessary to the administration of my Estate, and to compensate them therefrom;

(g) To file joint federal and state income tax returns with my spouse and to pay a proper share of the assessed tax.

Testimonium

28. IN WITNESS WHEREOF, I have hereunto set my hand at _____, Ohio, this _____ day of 20__.

Attestation Clause

29. The foregoing instrument was, on the date thereof, signed, published and declared by _____ as and for h____ Last Will and Testament in the presence of us the undersigned, who, at h___ request and in h___ presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses and we hereby certify that, at the time of the execution hereof, we believe the said testator to be of sound and disposing mind and memory.

_____ residing at _____

_____

_____ residing at _____

_____

Identification of Attorney / Preparer

30. This instrument was prepared by:

_____

Attorney at Law
Telephone:

Misc. Clauses

(In Terrorem)

31. ITEM ____. If any legatee or devisee hereinbefore named shall institute or prosecute-any action to contest or set aside this, my Last Will and Testament, the legacy or devise hereinbefore given to such person shall be thereby forfeited and annulled and shall pass as though such person and his issue predeceased me.

(Precatory Clause "good intention")

32. ITEM ____. It is my desire that my estate be administered expeditiously and without unnecessary conflict among or between my beneficiaries. I therefore direct that the Probate Court having jurisdiction over my estate, in its sole discretion and upon application by any of the persons having an interest in my estate or the estate fiduciary, make an appropriate set-off or assessment against any beneficiary who unreasonably causes unnecessary delay or expense to the estate due to a lack of cooperation or intentional interference by such beneficiary or anyone acting on behalf of said beneficiary during the administration of the estate. As used in this Item, lack of cooperation or interference shall include but not be limited to actions in bad faith, actions of a vexatious

nature, or even mere obstinance if the Court deems such obstinance as unwarranted under the circumstances.

(Precatory Clause "Clarification")

33. ITEM ____. Any interest that I may have in any joint bank accounts, stocks, or bonds with right of survivorship with my spouse or any issue of mine are hereby declared to be the sole property of my spouse or such issue, as the case may be, and my Executor shall make no claim against them on account thereof.

(Disinheritance)

34. ITEM ____. I have deliberately made no provision herein for the benefit of my _____, _____, not because of any lack of love or affection but because he/she has ample property of his/her own.

(Cremation)

35. ITEM ____. It is my desire that upon my death my earthly remains be cremated and not retained for public display. I direct that my Executor pay the expenses of my cremation as a-cost f administration of my estate as soon as practicable after my death.

(Codicil)

36. I, _____, a resident of the County of Franklin, State of Ohio, being of full age and of sound and disposing mind and memory and not under any restraint, having made my Last Will and Testament on the ____ day of _____, 20 __, hereby republish said Last Will and Testament, and by way of amendment thereto, do now make, publish and declare this to be the first

Codicil to my said Last Will and Testament making the following substitutions of:

_____

and I direct that ITEM ___. Of my Last Will and Testament be amended to read as follows:

ITEM ___. (insert new item from clauses above).

IN WITNESS WHEREOF, I have hereunto set my hand at _____, Ohio, this _____ day of 20__.

The foregoing Codicil was, on the date thereof, signed, published and declared by _____ as and for h____ first Codicil to h __Last Will and Testament, dated _____, _____, 20 __, in the presence of us the undersigned, who, at h___ request and in h___ presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses and we hereby certify that, at the time of the execution hereof, we believe the said testator to be of sound and disposing mind and memory.

_____ residing at _____

_____

_____ residing at _____

_____

FURTHER REFERENCE SOURCES FOR WILL CLAUSES:

Anderson's Estate Planning Forms and Clauses, Second Edition, Jeffrey A. Schoenblum.

Ohio Will Manual, City National Bank & Trust Co. (Out of print, but a timeless workhorse. Check local law libraries.)

Senior Legal Services -
STANDARD WILL PROVISIONS
5-00

WP-1 ENTIRE ESTATE TO ONE PERSON

I give all of my property to my (relationship), (name), absolutely.

WP-2 ESTATE TO ONE PERSON PROVISION FOR BENEFICIARY DEATH

I give all of my property to my (relationship), (name), absolutely. If _____ predeceases me or fails to survive me by thirty days, I give all of my property to my (relationship), (name), and my (relationship), (name), equally, share and share alike.

Insert – WP-19 (Per Capita) or WP21 (Per Stirpes)

WP-3 ENTIRE ESTATE TO TWO PEOPLE

I give all of my property to my (relationship), (name), and my (relationship), (name), equally, share and share alike.

Insert - WP-19 (Per Capita) or WP-21 (Per Stirpes)

WP-4 ESTATE TO MORE THAN ONE PERSON WITH SURVIVOR CLAUSE

I give all of my property to my (relationship), (names), equally, share and share alike. If either of the beneficiaries named in this item of my Will predecease me, leaving the other surviving, I give all my property to the survivor, absolutely.

(Plural) any ... others ... survivors ... equally, share and share alike.

WP-5 PERSONAL PROPERTY TO SPOUSE WITH PROVISION FOR BENEFICIARY DEATH

I give to my (wife, husband), if she/he survives me, all of the tangible personal property which I may own at the time of my death. If my

wife/husband does not survive me. I give said tangible personal property to my then living children to be divided among them as they shall agree, or failing agreement, as my Executor shall deem best.

WP-6 PERSONAL PROPERTY TO BE SELECTED BY BENEFICIARY

I give to my (relationship), (name), a (picture book, etc.), to be selected by (her or him), absolutely.

WP-7 GIFT PERSONAL PROPERTY WITH UNWANTED ITEMS TO BE DISTRIBUTED

I give all my personal tangible effects to my (relationship), (name), for (herself or himself), requesting that (she or he) distribute to others those articles which they may want that (she or he) does not want; (name) to be the sole judge and to have complete discretion as to the distribution.

WP-8 PERSONAL PROPERTY TO BE SELECTED BY BENEFICIARY

I give all my personal tangible effects to my (relationship), (names), to be divided among them by each choosing one beginning with the oldest and so on in succession until all of my personal tangible effects have been chosen.

WP-9 PERSONAL PROPERTY TO BE SELECTED BY BENEFICIARY

I give to my (relationship), (names), such of my property not otherwise made the subject of specific bequest in this my Will, as they shall choose. Any articles not so chosen by them or as to which they cannot agree on a disposition, shall form part of my residuary estate.

WP-10 PERSONAL PROPERTY TO BE SELECTED BY BENEFICIARY

I give such of my remaining tangible personal property as may be selected by (relationships), (name), to them, with the balance of said property to be sold and to pass as a part of my residuary estate. In the event that my (relationships), (names) shall be unable to agree upon the division and distribution of such property among themselves, I authorize my Executor to make such division in (his or her) absolute

discretion.

WP-11 GIFT TO FRIEND CHOSEN BY EXECUTOR

I request that my Executor give my friend, (name), an appropriate memento in remembrance of me, but I expressly declare that I do not intend to create any trust or require any accounting with respect to the handling or disposition of this item of my Will.

WP-12 PERSONAL PROPERTY DISTRIBUTION

I give to my (relationship), (name), all my jewelry, wearing apparel, personal effects, books, motor vehicles, water-craft, furniture, furnishings, household goods and similar items of personal and household use, together with the insurance thereon. If my said , (relationship), predeceases me, my Executor shall have the sole discretion to: (1) sell all or any part of the items mentioned in the first sentence of this Item and distribute the proceeds of sale as a part of my residuary estate; or (2) distribute all or any part of such items to relatives, friends or charitable organizations.

WP-13 PERSONAL PROPERTY GIVEN BY MEMORANDUM

I request that my Executor dispose of my personal property according to my wishes which are known and as the same may be known to my Executor, but I expressly declare that I do not intend to create any trust or require any accounting with respect to the retention, handling or disposition of any of my personal property disposed of in this item.

WP-14 PERSONAL PROPERTY GIVEN BY MEMORANDUM

I give to my (relationship), (name), all my jewelry, wearing apparel, personal effects, books, motor vehicles, furniture, furnishings, household goods and similar items of personal and household use (excluding money of any kind) with the request that any items listed in a memorandum left by me be distributed pursuant to such memorandum. If, (name), predeceases me, my Executor shall have the sole discretion to: (1) sell all or any part of the items mentioned above and distribute the proceeds as a part of my residuary estate; or (2) distribute all or any part of such items to friends, relatives or charitable

organizations.

WP-15 PERSONAL PROPERTY GIFT TO INDIVIDUAL

I give to my (relationship), (name), my (item given), absolutely.
Can add, if applicable, automobile, or any automobile I may possess

WP-16 PERSONAL PROPERTY GIFTS TO SEVERAL INDIVIDUALS

I give the following items to the following persons:

(1) I give my (item given) to my (relationship), (name), absolutely.

(2) . . .

WP-17 PROPERTY TO ANOTHER IN CASE OF DEATH

If (name) predeceases me or fails to survive me by thirty days, said bequest shall go to my (relationship), (name), absolutely
or equally, share and share alike.

WP-18 PROPERTY TO BECOME PART OF RESIDUARY ESTATE IN CASE OF DEATH

If (name) predeceases me or fails to survive my by thirty days, said bequest shall become a part of the residue of my estate.

WP-19 PROPERTY DIVIDED AMONG SURVIVING BENEFICIARIES

Should ****any/either**** of the above mentioned persons predecease me, leaving other beneficiaries named in this item of my Will, their share shall be divided among the surviving beneficiary or beneficiaries, equally, share and share alike.

WP-2O DECEASED PARENT PROVISION

I give all of my property to my (relationships), (names), equally, share and share alike. If (either any) of them predecease me, leaving child or children surviving, said child or children shall take the share of the

deceased parent as if the deceased parent had survived me.

WP-21 DECEASED PARENT PROVISION

Should (he/she) predecease me, leaving child or children surviving, said child or children shall take the share of the deceased parent, as if the deceased parent had survived me, equally, share and share alike.

WP-22 PROPERTY TO BE SOLD

I direct that all of my real and personal property be sold at public auction or private sale as soon as practical after my decease and the proceeds thereof distributed to my (relationships), (names), equally, share and share alike.

WP-23 PROPERTY TO BE SOLD

I direct that all of my real and personal property be sold at public auction or private sale as soon as practical after my decease and the proceeds thereof distributed as follows:

1) to my (relationship), (name), the sum of (amount) dollars ($_____), absolutely.

2) .....

The remainder, if any, of the proceeds, after the above bequests, shall become a part of the residue of my estate.

WP-24 MULTIPLE CASH LEGACIES

I give the following sums to the following persons:

1) to my (relationship), (name), the sum of (amount) dollars ($_____), absolutely.

2) .....

WP-25 CASH LEGACY

I give to (organization name) or my (relationship), (name), the sum of (amount) dollars ($_____).

WP-26 CASH LEGACY FOR SPECIFIC PURPOSE

I give to (organization name) or my (relationship), (name), the sum of (amount) dollars ($_____) to be used (to for) (their education/kidney research).

WP-27 GIFT OF BANK ACCOUNT FUNDS AND NOTES

I bequeath all monies I may possess, my checking account monies, savings account monies, Certificates of Deposits, bonds of any nature and other evidence of debt such as promissory notes, to my (relationship), (name), absolutely.

WP-28 BANK ACCOUNT

I give my (relationship), (name), all of the money (I have on deposit in account number _____), at the (name of the bank) Bank, (city), (state), absolutely.

WP-29 BANK ACCOUNT

I give to my (relationship), (name), the sum of (amount) dollars ($_____), which shall be payable out of the balance of my (savings or checking) account located in the (name) Bank and bearing account number _____, absolutely.

WP-3O INSURANCE POLICY PROCEEDS

I give to my (relationship), (name), the proceeds of a policy of insurance upon my life issued by (name) Insurance Company payable to my estate.

WP-31 LIMITED OPTION TO CHILDREN TO PURCHASE REAL PROPERTY

I request my Executor to consider the wishes of my children before disposing of any real property that I may own at the time of my death.

If any of my children shall wish to purchase all or any part of such property for an amount equal to its appraised value at the time of my death, and shall so notify my Executor, in writing, I request, but do not direct, my Executor to permit such child to purchase such property. In the event of any dispute with respect to the disposition of said real property, the decision of my Executor shall be final and binding on my heirs, legatees, and devisees.

WP-32 DISINHERITANCE

I have intentionally made no provision herein for my (relationship), (name), and any of my other relatives.

WP-33 DISINHERITANCE

I have intentionally made no provision for (relationship), (name) and any of my other relatives, because I have already provided for (him or her).

WP-34 GIFT TO MINOR TO BE HELD BY ADULT

If any ****grand****child****ren**** of mine is then a minor, my Executor is authorized to distribute such property to any suitable person selected by my Executor for distribution to such ****grand****child****ren**** when he or she reaches the age of majority or at an appropriate time prior thereto. The receipt of any such person receiving any such distribution shall constitute a complete acquittance to my Executor for the property so distributed and such person shall not be subject to liability for loss of or damage to said property during the period within which he or she holds it.

WP 34A If my grand (daughter/son), (name) is then a minor, my Executor is authorized to distribute my (item) to (her/him) when (she/he) reaches the age of majority or at an appropriate time prior thereto. The receipt by (her/him) of this distribution shall constitute a complete acquittance to my Executor for the property so distributed and (she/he) shall not be subject to liability for loss of or damage to said property during the period within which (she/he) holds it.

WP-35 PROVISION DISQUALIFYING AFTERBORN CHILDREN

This Will shall remain in full force and effect even though I may have or adopt other children.

WP-36 GUARDIAN

In the event it is necessary to have a guardian appointed for my (relationship), (name), and their (father or mother) is unwilling or unable to act as guardian, I nominate (relationship), (name), as guardian of the person and estate of (name). It is my desire that the abovenamed guardian have custody of the child. I direct that no bond or other security shall be required of (guardian name) in any jurisdiction for the faithful performance of (his or her) duties as such Guardian.

WP-37 JOINT GUARDIANS

I nominate my (relationships), (names), Guardians of the person and property of my children, (names), and if either (guardian names) predecease me or for any reason fail or refuse to serve, I nominate the other party as sole Guardian. I direct that no bond or other security shall be required of (guardian names) in any jurisdiction for the faithful performance of his or her duties as such Guardian.

WP-38 GUARDIAN

In the event it shall be necessary to have a guardian appointed for any of my children during minority, and my (wife or husband) is unwilling or unable to serve, then I nominate (name) of Columbus, Ohio, as guardians of both the estate and person.

WP-39 GUARDIAN

I nominate my (relationship), (name), Guardian of the estate of my (relationship of minor), (minor's name).

WP-4O DEVISE OF CEMETERY LOT

I give to my (relationship), (name), all of my right, title, and interest in my cemetery lot in (name) Cemetery at (address), being lot number

_____ therein.

WP-41 DELIVERY EXPENSES PAYMENT

I direct that the reasonable expense of packing, shipping and delivering the tangible personal property passing under this Item shall be paid by my Executor as an Administrative expense of my estate.

WP-42 CHARITY

I give all of my property to (charity's name) presently located at (address).

WP-43 CHARITY

I give the residue of my estate to (charity's name) located at (address).

WP-44 PREDECEASE

If she/he predeceases me, said bequest shall to go to my (relationship), (name).

WP-45 PREDECEASE

If she/he predeceases me, said bequest shall become a part of the residue of my estate.

WP-46 IN TERROREM CLAUSE

If any legatee or devisee hereinbefore named shall institute or prosecute any action to contest or set aside this, my Will, the legacy or devise hereinbefore given to such person shall be thereby forfeited and annulled and shall pass as though such person and his issue predeceased me.

WP-47 PEACE AND TRANQUILITY CLAUSE

It is my desire that my estate be administered expeditiously and without conflict among my beneficiaries. I therefore direct that the Probate Court wherein my estate is administered exercise uncontrolled

discretion in assessing punitive damages against any beneficiary or all beneficiaries of my estate for lack of cooperation in its expeditious closing. The punitive damages so assessed may be reallocated among other beneficiaries or may be paid to the church wherein I last had membership as the Court in its uncontrolled discretion may deem best for securing cooperation and attentiveness from my beneficiaries. Such assessment of damages may occur on the Court's own motion with or without notice at any time during the proceedings and as often as is needed. As used in this item, "lack of cooperation" shall not be limited to but shall include failure to execute waivers of notice, failure to pickup personal property, failure to allow showing of property to be sold or bringing or causing to be brought legal proceedings in any Court during this administration in bad faith, vexatiousness or obstinance.

WP-48 LIFE ESTATE

If my (relationship), (name), survives me, I give my entire estate, personal and real including any property over which I have a power of appointment, to (him, her), for and during (his, her) life, with the power to consume or dispose of so much of said property as may be reasonably necessary for (his, her) comfortable support. Upon the death of (name), I give the remainder of my estate to my (relationships), (names), equally, share and share alike.

WP-48a LIFE ESTATE

If my (relationship), (name), survives me, I give my real estate located at (address), and the household goods and furnishings contained therein to (him/her), for and during (his/her) life, with the power to consume or dispose of so much of said property as may be reasonably necessary for (his/her) comfortable support. Upon the death of my (relationship), (name), I give the remainder of said property to my (relationship), (names), equally, share and share alike.

WP-49 LIFE ESTATE

All of the residue of my estate, real, personal and mixed, of which I shall in any way, be entitled, at the time of my death, or over which I have any power of appointment, I give to my (relationship), (name), to

be held and enjoyed by (her/him), for and during (his/her) natural life. If, for the better conservation of my said estate, (name) shall deem it prudent or advantageous, (he/she) is hereby authorized and empowered to sell and convey in fee simple, and on such terms as (he/she) shall fix, any part of, or all of, my property herein given to (her/him), but the proceeds derived from any sale or conveyance shall be reinvested in other real estate or personalty, in (her/his) discretion as to kind, to be held and enjoyed by (her/him) during (her/his) natural life. I also authorize and empower (name) to lease any part, or all of my real estate, for a term not to exceed (number) years, without the consent or concurrence of any of the remaindermen, such lease to provide for the payment of rent to (name) during (his/her) life, and if (he/she) should die during the term, then to the remaindermen. Upon the death of (name), or upon my death, if (name) should die before me, I give the residue of my estate to my (relationships), (names) equally, share and share alike.

WP-5O LIFE ESTATE

Same as 45 or 46 except for remainder/residue clause

I give the (remainder/residue) of my estate to (name)'s children, then living share and share alike, and if any of (name)'s children predecease me, leaving child or children surviving, said child or children shall take the share of the deceased parent, as if the deceased parent had survived me.

WP-51 RESIDUARY CLAUSE TO ONE PERSON

I give the residue of my estate to my (relationship), (name), absolutely.

WP-52 RESIDUARY CLAUSE TO MORE THAN ONE PERSON

I give the residue of my estate to my (relationships), (names), equally, share and share alike.

WP-53 RESIDUARY CLAUSE WITH SURVIVORSHIP PROVISION

I give the residue of my estate to my (relationships), (name(s), absolutely or equally, share and share alike. If (any, either) of the

beneficiary or beneficiaries named in this Item of my Will predecease me or fail to survive me by thirty days, then the residue of my estate shall go to the surviving beneficiary or beneficiaries, equally, share and share-alike.

WP-54 RESIDUARY CLAUSE WITH PROVISION FOR BENEFICIARY DEATH

I give the residue of my estate to my (relationship), (name), absolutely. If (he/she) predeceases me or fails to survive me by thirty days, then the residue of my estate shall go to my (relationship), (name), absolutely.

WP-55 EXECUTOR - CONTINGENT

In the event that (name), predeceases me, dies, resigns, or is otherwise unable or unwilling to serve as my Executor, then I appoint (alternate Executor's name) to be my Executor, with like power and authority to serve without bond.

WP-56 CO-EXECUTOR

I appoint my (relationships), (names), to be Co-Executor of this Will, but if either of them is unable or unwilling to serve, then the other shall serve as sole Executor, with like power and authority to serve without bond.

*** In Close Out Letter – insert:

This is a reminder that since you chose two people to be your co-executors, they could disagree on some matters and delay the probate process of finalizing your estate matters. However, you stated at our interview, that they will have no problem in agreeing with each other.

ATTORNEY AT LAW
The Frank J. Lausche Building, 11th Floor
615 Superior Avenue, West
Cleveland, Ohio 44113-1899
216.787.3030

October _____, 200_

Mrs. _____
12345 _____, #001
_____, Ohio 44____

Re: Last Will and Testament, Living Will, Durable Power of Attorney for Healthcare and Durable Power of Attorney

Dear Mrs. _____:

I have enclosed the original and copies of your Will, Durable Power of Attorney for Healthcare, Living Will and Durable Power of Attorney that you recently signed. The following explains what you should do with the each of these documents.

You should keep the original of your Will in a safe place with your other important documents. You may also want to keep a copy of your Will in an easily accessible location for future reference. You should let your Executor know where your Will is located should he need to access it.

You should also keep the original of the Living Will and Durable Power of Attorney for Healthcare in a safe place with your other important documents. You will want to give a copy of each document to those individuals you designated to be notified as well as your physician, nurse, health aid, etc. You can always make more copies of each document as the need arises. That is why I suggest you hold onto the originals.

You should keep a copy of your Durable Power of attorney for future reference. If the attorney-in-fact you designated to act on your behalf intends to use the Durable Power of Attorney to negotiate a real estate transaction on your behalf, he must file the Durable Power of Attorney with the County Recorder's Office where the real estate is located. The cost to record a Durable Power of Attorney with the Cuyahoga County Recorder's Office is $14.00 for the first two (2) pages and $4.00 for every page thereafter. If you have any further questions about filing the Durable Power of Attorney with the Cuyahoga County Recorder please call their office at 216.443.2033.

This shall conclude my representation of you in these matters.

Very truly yours,